

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1550

74-1550

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
-against-
CARMINE TRAMUNTI, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANTS-APPELLANTS' JOINT APPENDIX
Vol. S(3)--Pages 266 to 413

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United States of America

v.

73 Cr. 1099

Carmino Tramunti, et al.,

January 11, 1974
10:00 a.m.

(Hearing resumed.)

(In the robing room, present Mr. Phillips,
Mr. Allina, and Mr. Curran.)

MR. GALLINA: I have come to an agreement with
the Assistant U. S. Attorney concerning pleading my client
and he is going to plead this morning to all the counts
that he is named in, except for counts 3 and 4, and this
has- been agreed to by the United States Attorney.

MR. PHILLIPS: That is correct, your Honor.

THE COURT: How many counts is that?

MR. GALLINA: That is seven counts. Seven counts,
your Honor.

THE COURT: Does he have any prior narcotics
convictions?

MR. GALLINA: No. He has none.

MR. PHILLIPS: How about Judge Gagliardi's con-
viction?

1
2 MR. GALLINA: No. He plead to the use of a
3 telephone.

4 MR. PHILLIPS: That was an 843. That's a nar-
5 cotics conviction --

6 THE COURT: Well, it doesn't much matter. With
7 seven counts--

8 MR. GALLINA: This is all during the same period
9 of time he was involved with these activities.

10 THE COURT: Can we go off the record.

11 (Discussion off the record.)

12 THE COURT: On the record.

13 (Present: Mr. Rochman, Mr. Gallina and Mr.
14 Phillips.)

15 THE COURT: Mr. Rochman, I understand that your
16 defendant, Frank Pellegrino, had a son aged 23 who died
17 yesterday at the New York City Detention House commonly
18 known as the Tombs, is that correct?

19 MR. ROCHMAN: I am informed, your Honor, yes.

20 MR. PHILLIPS: We have had that checked out.

21 THE COURT: Without mentioning this case or his
22 father, just mentioning his name, he died yesterday.

23 Do you have a motion?

24 MR. ROCHMAN: Yes. I would renew the motion I
25 made before your Honor yesterday to sever Mr. Pellegrino's

2 case at this time for all the reasons I indicated yester-
3 day.

4 THE COURT: Including his physical condition?

5 MR. ROCHMAN: I assume your Honor has a report
6 as to that.

7 MR. PHILLIPS: The government consents to that
8 motion.

9 THE COURT: All right. The motion is granted.
10 Submit your CJA form right away.

11 MR. GALLINA: Your Honor, one of the defend-
12 ants, Mr. Tramunti, informed my client that if he pleads,
13 he intends to call him as a witness. My client says
14 he will not be a witness and if he is going to be called
15 as a witness he will not plead.

16 He asked me to call the attorney for that de-
17 fendant and that defendant had indicated to him the at-
18 torney says he won't call him.

19 I would like to spend a few minutes with Mr.
20 Siegal. I am sure he will say he will not call him.

21 THE COURT: Mr. Rosenberg and Mr. Lopez entered
22 the robing room.)

23 MR. CURRAN: Your Honor, I don't know whether it
24 is appropriate that Mr. Lopez be here for this particular
25 conference. I suspect that it is not, unless Mr. Rosenberg

1
2 wants him to be here.

3 MR. ROSENBERG: I do.

4 THE COURT: All right.

5 MR. CURRAN: Your Honor, yesterday afternoon in
6 the course of defense counsel interviewing government wit-
7 nesses, which was, I understand, by Court direction -- the
8 witnesses are in protective custody -- the witness John
9 Barnaba was in the conference room in my office, Room 401,
10 and shortly after two o'clock, around 2:15 or 2:20 p.m.,
11 Mr. Rosenberg and some other attorneys came to interview
12 him.

13 Mr. Rosenberg was the first.

14 I told the attorneys to go into the conference
15 room to see Mr. Barnaba, who was there with the United
16 States Marshals and I want to report to the Court briefly
17 on what transpired at that meeting.

18 Mr. Rosenberg did not state whom he represented.
19 The witness, I am informed, explained to Mr. Rosenberg that
20 he had nothing to say to Mr. Rosenberg and did not care to
21 hear anything Mr. Rosenberg said to him.

22 Mr. Rosenberg asked him if his attitude represented
23 that of a stand-up man, and he repeatedly asked the
24 witness Barnaba if he was in protective custody, to which
25 Barnaba responded, "No comment."

1
2 Mr. Rosenberg asked the witness if he had previous
3 narcotics convictions and the answer was, "I have nothing
4 to say." In court I will answer any questio-s that you
5 wish ot ask."

6 Mr. Rosenberg was again advised by the witness
7 that he didn't want to speak to him further.

8 At this point, since Mr. Rosenberg persisted in
9 asking questions after being told by the witness a number
10 of times he didn't care to answer any, one of the marshals
11 there, Mr. Darnel, told Mr. Rosenberg evidently the inter-
12 view was over.

13 Mr. Rosenberg went over to the door and said to
14 the witness, "It is a pleasure to have met a stool pigeon,"
15 to which the witness responded, "Tell me that on the street."

16 Mr. Rosenberg replied, "If you are ever on the
17 street let me know. I am in the phone book."

18 The witness said, "I know where you are," and
19 Mr. Rosenberg left.

20 I bring this to your Honor's attention because
21 in the government's view at least Mr. Rosenberg's conduct
22 with respect to the witness, particularly the departing
23 sally, was at the very least unprofessional conduct by a
24 member of this bar in the government's judgment, and as I
25 say, that's at the very least.

1
2 I think the overall circumstances of this sit
3 ation make it clear, at least to the government, that M
4 Rosenberg was attempting not in a very subtle way to
5 intimidate this witness, and I believe this entire matt
6 should be put on the record, as I say, for the Court's at
7 tention.

8 I will say that we intend to bring this to the
9 attention of the Bar Association as well.

10 THE COURT: Mr. Rosenberg?

11 MR. ROSENBERG: I don't understand just wha
12 it is specifically that I did wrong. I intend to call
13 this man a stool pigeon on the stand. I may even do it
14 on summation. As a matter of fact, I think I will. I
15 think I would be remiss in my duties as an attorney if I
16 didn't attempt to rattle the witness, and I was laying
17 the foundation at this interview.

18 The fact that he indicated to me that he didn't
19 want to answer any questions-- I didn't think I was duty
20 bound to stop as soon as he said that, and I felt I had
21 an opportunity to delve into that and I am sorry I had to
22 give away my trial strategy at this point. But it is my
23 intention to rattle him and I was laying a foundation for
24 what I was going to do in the courtroom.

25 THE COURT: It is a regrettable incident, to

the least. There are other ways, I am sure, of laying a foundation without doing it that way. It could be -- I don't know how it was said but it could have been said in such a way that the witness could take it as a threat.

Needless to say it can't be repeated in this case. I will expect it will not be repeated in some other case.

MR. ROSENBERG: I will take the admonition of the Court, but are you telling me I can't call him a stool pigeon?

THE COURT: When you call him in the case?

MR. ROSENBERG: When he is on the stand.

THE COURT: I am saying the tone of voice that was used yesterday with those words could have been taken as a threat. I wasn't there, but it is the kind of thing that puts you in a position which needlessly calls into question things which don't have to be questioned at this point.

MR. ROSENBERG: Your Honor, I had intended, unless the Court admonishes me to the contrary -- I will when I call him a stool pigeon in the courtroom, on the stand -- I intend to do it in as derogatory a manner as I possibly could. I feel it is good strategy on behalf of the defense.

Now, certainly when you are talking about threats,

1
2 I am so far removed from being involved in a threat to
3 this defendant.

4 It serves me no purpose. He is not harming me.

5 THE COURT: Well, I am aware of that fact, but all
6 I am suggesting that this is the type of thing which calls
7 in question your motives, and you should not get yourself
8 in that position again.

9 What happens during the trial of the case I
10 will take care of during the trial of the case. I assure
11 you if you go up and shake your fist at the guy, you will
12 wish you had not.

13 All right?

14 It all depends on how it's done. I don't know
15 how it was done. I certainly wasn't there. I have great
16 difficulty being in one place at a time without being in
17 two. But it is the type of conduct which should not be
18 repeated.

19 MR. CURRAN: Your Honor, if I may, what Mr.
20 Rosenberg may or may not ask the witness in the courtroom
21 of course is up to your Honor and Mr. Rosenberg. The
22 marshals reported to me that the entire atmosphere, the
23 entire impression evidently was one of intimidation. But
24 the point is that when a witness at one of these interviews
25 tells a lawyer he doesn't want to answer any questions, the

1 lawyer should, after perhaps pursuing it a little bit,
2 desist. The terms "stool pigeon" and "stand up" are
3 well-known. We know what they mean. I think in this
4 instance the method was a very clear one.
5

6 We aren't talking about cross-examination in the
7 courtroom and Mr. Rosenberg knows that.

8 I think that's wholly irrelevant to the point I
9 was making to your Honor.

10 THE COURT: I understand. It is not going to
11 be repeated, Mr. Curran.

12 MR. CURRAN: Thank you.

13 MR. LOPEZ: Your Honor, may Mr. Curran and Mr.
14 Phillips stay? I wanted to discuss something with regard
15 to the seating arrangements that they should be privy to.
16 One these seating arrangements are made there would be
17 no departure from them, otherwise we are going to have
18 chaos in the courtroom.

19 Some of the witnesses have indicated to me that
20 there will be a problem of identification. At that time,
21 they have asked me if they can re-seat their clients within
22 the courtroom. If there is any -re-seating to take
23 place I will advise your Honor as far as the defendants
24 are concerned, that this is going to take place.

25 MR. PHILLIPS: Your Honor, may I just take up a

different matter while Mr. Lopez is here? With respect to peremptory challenges - I think that was the first matter that your Honor took up at the pretrial conference on Monday, and as I read the record, your Honor is giving the defense additional challenges in the amount of one to each defendant, and the challenges are to be exercised, as I understand it, in a general manner, five from the defendants, two from the government, five from the defense, two from the government.

Now, my question to your Honor is because it doesn't appear to me to be clear from the record is what is the total number that the government has been granted?

THE COURT: The total number is this: The defense gets ten challenges plus one for each defendant actually going to trial. I don't know how many are actually going to trial. As of five minutes ago Pellegrino was going to trial. He's been severed. And we won't really know until we start the trial. The way it is going to work is five and two, five and two, five and two all the way down until we have the last five and two.

MR. PHILLIPS: Then the government gets two challenges after each five challenges for the defense?

THE COURT: Yes, and until I figure out how many people I am going to try I can't tell you how many challenges

everybody is getting.

I thought I made it clear. Unfortunately, I didn't.

(In open court.)

THE COURT: All right, Mr. Lopez, are you ready?

MR. LOPEZ: Yes.

I think direct examination of the Witness Spurdis was completed and Mr. Phillips was about to commence cross-examination.

I merely wish to report several matters regarding these proceedings to your Honor.

One is that other than a "good morning" to Mr. Spurdis this morning, I have not been in communication with him. However, I do think that Mr. Phillip's suggestion yesterday that once a witness takes the stand, he should not be interviewed by the party calling him is a very excellent suggestion and I would hope that that decision, your Honor, is adhered to throughout the trial proceedings, and, of course, that's my application to your Honor, if he can lay that down as a ground rule and due to the fact that I have so religiously observed it at the government's request.

The second--

THE COURT: I am not going to rule on that right now. I want to think about it.

1 MR. LOPEZ: Your Honor, the second matter that
2 I wish to report to your Honor is this, that on my own
3 I advised Mrs. Nancy Rosner very briefly on the telephone
4 of what was transpiring here and I suggested to her that
5 she come this morning.
6

7 She indicated to me that she would be here some
8 time this morning.

9 That was in the interests of her client, Mr.
10 Spurdis, I advised her of that.

11 These are the two things I would like to report
12 to your Honor.

13 THE COURT: All right.

14 Officer Spurdis around?

15 MR. LOPEZ: Yes, your Honor, he is here.

16 THE COURT: Is he in the courtroom?

17 MR. LOPEZ: He may be outside.

18 ...

19 J O H N S P U R D I S, resumed.

20 THE COURT: All right, Mr. Phillips.

21 CROSS-EXAMINATION (continued)

22 BY MR. PHILLIPS:

23 Q Officer Spurdis, yesterday you testified on direct
24 examination that you did not believe that you had probable
25 cause on the evening of February 3, 1972 to stop the car

and look into the suitcase or to make an arrest of Vincent Papa and Joseph Di Napoli, is that correct?

A Yes, sir.

Q I believe I showed you or I asked you if you recalled being interviewed by a gentleman by the name of Inspector Comperiatì on October 8, 1973.

A Yes, sir.

Q And you were represented by an attorney at that time?

A Mrs. Nancy Rosner.

Q And you were asked questions about the events of the evening of February 3, 1972?

A Yes, sir.

Q At that time isn't it a fact that you said to Inspector Comperiatì when you were relating the events of February 3, 1972 the following:

"I thought that there -- we would have probable cause in just that Mr. Papa's reputation, being at this-- being at this particular location under these circumstances, that I was willing to take a shot at him, that I felt that I had probable cause to stop the car and to search that suitcase."

Did you make that statement?

MR. LOPEZ: Objection, your Honor.

1
2 THE COURT: I will permit it.

3 MR. LOPEZ: May I have an opportunity to ex-
4 amine the document now that it is being used?

5 THE COURT: Yes. See if that is the quote, ab-
6 solutely.

7 MR. LOPEZ: May I do so now, your Honor?

8 THE COURT: Yes.

9 MR. LOPEZ: May I look at the whole document?

10 MR. PHILLIPS: Your Honor, I object to that.

11 THE COURT: Just the one question.

12 MR. LOPEZ: Will I be permitted to use it later
13 on in my redirect examination, the entire document, to
14 rehabilitate the witness if necessary?

15 THE COURT: If necessary. Let's see. I will
16 have to take a look at the document.

17 Go ahead, show him the question.

18 MR. PHILLIPS: I asked a question.

19 May the question be read back by the reporter?
20 I asked the witness a question.

21 MR. LOPEZ: The issue is not the question itself
22 your Honor, but whether I can see the question on the
23 paper.

24 MR. PHILLIPS: Your Honor, I asked the witness
25 a question, whether he said something, made a statement to

Inspector Comperiatl at a certain time.

That is all I have asked the witness at this time.

MR. LOPEZ: Referring to a document.

THE COURT: I understand.

Read back the question.

(Question read.)

A No, sir, I can't recall making that exact statement.

MR. LOPEZ: Excuse me. I move to strike that answer.

THE COURT: No, no. Let the answer stand.

Show him the answer.

Q Let me show you--

THE COURT: No, no. Show Mr. Lopez the answer, please.

MR. PHILLIPS: Your Honor, the witness said he can't recall making that statement.

I want to show him a document to see if it refreshes his recollection.

THE COURT: All right. I understand you. Just relax.

Show it to him.

Q I show you what has been marked Government

Exhibit 3 for identification, page 5, and I point to certain underlined sentences.

Would you read just that, Officer Spurdis, to yourself and see if that refreshes your recollection as to whether you made that statement to Inspector Comperiat

A No, sir, that doesn't refresh my recollection at all.

MR. LOPEZ: Can I see the statement now, your Honor?

THE COURT: No.. I am going to take a look at it first.

MR. LOPEZ: Your Honor said no?

THE COURT: I said I am going to take a look at it first.

Q Is it your testimony, Officer Spurdis, that you did not make such a statement to Inspector Comperiat?

A No, sir, that is not my testimony. My testimony is that I do not recall making such a statement.

Q And if you did make such a statement would that statement be accurate?

A Sir, during that interrogation that you keep referring to there was a tape recording made..

Q Would you please answer my question?

MR. LOPEZ: Your Honor, I think the answer is

responsive and I think that would be evidence.

MR. PHILLIPS: The answer calls for a yes or no.

THE COURT: The question called for a yes or no.

MR. PHILLIPS: The question rather.

A Sir, when we recessed yesterday I made reference to --

MR. PHILLIPS: Your Honor, I object to this rambling discussion.

THE COURT: Yes or no.

Read the question back, Mr. Reporter.

(Question read.)

MR. LOPEZ: Your Honor, I am going to object to that question. That is such a hypothetical question, if you did make that statement.

Ask him if that would be the true situation, if there was probable cause or not.

THE COURT: No. I will permit the question. Answer it yes or no.

A If I did make that statement would it be accurate? It would be accurate at that time that I made the statement, yes, sir.

Q On October 8, 1973, did you believe at that time that you had probable cause on the evening of February 3,

1972 to stop the automobile that Papa and Di Napoli were traveling in and to search the suitcase that was in the back seat?

A Sir, I have already made the statement that I don't recall giving that answer to Inspector Comperiat, after looking at that document.

Q Would you answer my question, please, Officer Spurdis?

A I think I did.

Q As of October 8, 1973, did you believe at that time that you had probable cause to stop the automobile that Papa and Di Napoli were traveling in and to search the suitcase in the back seat?

A I can't say that on October 8 that I did believe that, because I do not recall making that statement.

MR. PHILLIPS: Your Honor--

THE COURT: I think he has answered.

Q Do you now believe that you had probable cause to stop the automobile and to search the suitcase?

A No, sir.

Q Did you in October of 1973 believe that you had probable cause to stop the automobile and search the suitcase?

A I don't recall.

Q Did you on February 3, 1972 believe that you had probable cause to stop the automobile and search the suitcase?

A Would you explain to me the meaning of "probable cause" as you see it?

THE COURT: No. The question is as you understood it.

A As I understand it? No, sir, I did not.

Q In other words, for the entire time from February 1972 until the present you have been under the belief that you did not have probable cause to stop the automobile and search the suitcase?

A On the date that I did stop that car, place both occupants under arrest and seize the suitcase, it is my belief that I did not have probable cause to do it.

Q And you have maintained that belief from that evening until the present day, is that correct?

A I have that opinion today, yes.

Q Have you always had that opinion since February 3, 1972?

A I have not thought of it.

TH23am

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an.

Q Have you at any time changed your view as to whether or not you thought you had probable cause that evening?

A I don't know, sir. I haven't given it any thought. I had no idea I was going to come to court as a witness.

Q Do you understand my question, Officer Spurdie? Since February 3, 1972, have you at any time changed your position or your view or your belief that you did not have probable cause the evening of February 3, 1972?

THE COURT: Answer it yes or no.

A Possibly.

Q When might you have changed your belief?

A I don't know.

Q In any event, when you were interviewed or as October 1973, when you were interviewed by Inspector Comparati about these events, at that time did you believe that you had probable cause to make the search on February 1972?

MR. LOPEZ: Objection, your Honor, on one further ground. I do not know how the government acquired Government Exhibit 3.

I think it's marked 3, Mr. Phillips.

MR. PHILLIPS: Yes.

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2
3 MR. LOPEZ: I don't know if it's proper for the
4 government to be using that type of a statement in these
5 proceedings. I don't know, your Honor, if the government
6 acquired that transcript or whatever it is -- I haven't
7 seen it -- in any proper way.

8
9 Now, what I am doing now, your Honor, is I am
10 moving to suppress that statement also, and I ask that your
11 Honor examine it first in chambers, examine the New York
12 laws applicable to that, to ascertain whether or not the
13 government has acquired this document and this transcript,
14 whatever it be, in an illegal manner, and therefore it
15 should not be the subject matter of any questions to this
16 witness. I am asking that your Honor examine it in camera
17 and examine any appropriate legislation that may be con-
18 cerned with it.

19
20 THE COURT: I will examine it in camera, as I
21 said I would before.

22
23 MR. LOPEZ: Would you do so, your Honor, before
24 the witness is questioned further?

25
26 THE COURT: No, I don't believe it's necessary.
27 Go ahead, Mr. Phillips.

28
29 MR. PHILLIPS: I think I asked a question, your
30 Honor, which was objected to.

31
32 THE COURT: Read back the question then,

Mr. Reporter.

(Question read.)

A I don't recall making that statement at that time.

Q I am not asking you whether you made the statement.

THE COURT: The question is not whether you made the statement, but did you have that belief at that time?

A I don't know, sir.

Q How many times have you testified in a court of law before, Officer Spurdis?

A Many hundreds of times.

Q On September 2, 1971 you were in the Cottage Inn in an undercover capacity, is that correct?

A On October 2?

Q September 2, 1971, were you in the Cottage Inn in an undercover capacity?

A I may have been.

Q Did not you testify on direct examination to having been in the Cottage Inn on September 2, 1971, where you overheard a conversation between Frank Facchiano and another individual?

A I believe the testimony pertained to September 3

Q September 3rd. Did you later describe this indi

vidual as John Doe No. 3 that you overheard in conversation with Frank Facchiano?

A Yes, sir, I did.

Q What was the conversation you heard between Frank Facchiano and the other individual?

A To the best of my recollection, the John Doe No. 3 and Francis Facchiano walked past me. I was the only occupant in the bar except for a bartender and passing me Frank Facchiano had made mention of "I'll need another eighth." That's to the best of my recollection.

Q He said that to this John Doe No. 3? Is that correct?

A Yes, sir.

Q Was there a later conversation between Facchiano and the same individual wherein Facchiano delivered a brown paper bag to the individual or -- excuse me -- where John Doe No. 3 received a bag from Frank Facchiano and said to Facchiano, "Is it all here?"

A Yes, sir, basically I recall that conversation.

Q Did you then give a description of this John Doe No. 3 to your group supervisor?

A Yes, sir, I did.

Q Your group supervisor, was he Peter Pallatroni at that time?

1
2 A Yes, sir, he was.

3 Q The description you gave of this John Doe No.
4 3, was it that he was approximately 38 years old, six feet
5 tall, 135 pounds, and had straight gray hair?

6 A A male white of that description, yes.

7 Q Did you also give a description after you
8 arrested or participated in the arrest of Di Napoli and
9 Papa of Di Napoli?

10 MR. LOPEZ: What was that question again, your
11 Honor?

12 THE COURT: Read it back.

13 (Question read.)

14 MR. LOPEZ: Is that February 3, 1972, your
15 Honor, is that what we are referring to?

16 MR. PHILLIPS: Yes.

17 THE COURT: I believe that's what we are
18 referring to. Is that correct, Mr. Phillips?

19 MR. PHILLIPS: Yes, your Honor.

20 THE COURT: I guess the description would have
21 been either late February 3 or early February 4, is that
22 correct?

23 MR. PHILLIPS: Yes.

24 THE COURT: All right. Go ahead, answer.

25 A I don't believe so, because Mr. Pallatroni was

there, as were the other agents, Agent Reed and my partner, Patrolman Reilly.

Q Didn't you prepare a report which had his description?

A No, sir.

Q You didn't prepare such a report?

A No, sir.

MR. PHILLIPS: May this be marked as Government Exhibit 4 for identification?

(Government's Exhibit 4 was marked for identification.)

MR. LOPEZ: May I see that report, your Honor, since it is being marked for identification?

THE COURT: Not until it's identified. Let's see what it's going to be used for.

Q I show you what has been marked Government Exhibit 4 for identification, Officer Spurdis.

Does your signature appear on that document?

A Yes, sir, it is my signature.

Q Is that not a report that you prepared relating to the events of February 3 and February 4, 1972?

A No, sir, it is not.

Q That report doesn't relate to those events?

A Yes, it does, but it was not prepared by myself.

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4590

2 Q It was not prepared by yourself?

3 A Special Agent Pallatroni typed this up.

4 Q But your signature appears on there, does it
5 not?

6 A Yes, it does.

7 Q Were you asked to sign that document?

8 A Yes.

9 Q Who asked you to sign this?

10 A Special Agent Pallatroni.

11 Q Did you read it before you signed it?

12 A I believe so.

13 Q Do you agree with the description that appears
14 on page 3 of that document as to Di Napoli?

15 THE COURT: Are you going to offer this in
16 evidence, Mr. Phillips?

17 MR. PHILLIPS: No, your Honor. Not at this
18 time in any event.

19 A Yes, sir. I do.

20 MR. PHILLIPS: In that event, I will offer it,
21 your Honor.

22 THE COURT: All right. Show it to Mr. Lopez.

23 MR. LOPEZ: I have no objection, your Honor.

24 THE COURT: All right. It will be received.

25 (Government's Exhibit 4 received in evidence.)

xxx

Q Officer Spurdis; when did you appear in this courtroom for this particular hearing for the first time?

A Yesterday.

Q Weren't you here on Wednesday?

THE COURT: Not in the courtroom. Were you in the court building on Wednesday?

THE WITNESS: On Wednesday?

THE COURT: Yes. Today is Friday.

THE WITNESS: Wednesday, yes. Yes, Wednesday was the first day I was here.

Q Were you served with a subpoena to appear here?

A Yes, sir.

Q By whom were you served with a subpoena to appear here?

A Mr. Lopez.

Q When were you served with a subpoena to appear here?

A Sunday past.

Q Prior to your being served with a subpoena to appear here did you discuss your testimony at this hearing with anybody?

A Well, I was a member of the Task Force with brother officers and with superior officers assigned to the task force, but I have had no conversation regarding it

whatsoever with anyone else since that time.

Q Since Sunday?

A Since I have been discharged from the New York Joint Task Force.

Q When were you discharged from the New York Joint Task Force?

A November 16th of this year.

Q 1973?

A Yes, sir.

Q Since November 16, 1973 then, you have had no conversation regarding the facts of this case with anybody?

A That's correct.

Q Subsequent to receiving the subpoena on Sun did you talk to anybody regarding the facts of this case or your testimony at this hearing?

A That means before Sunday?

Q No, after Sunday.

A After Sunday? I have not. Any discussion has taken place in this courtroom.

(Continued on page 294.)

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MR. PHILLIPS: I didn't think I heard the complete answer, your Honor.

(Answer read.)

Q When was the last time that you had any discussion with anybody regarding the facts of this case or the testimony that you have given here?

A I can't give you an exact date, but it would have to be -- it would have to be before September 3rd of this year, when I was involved in a shooting in making a purchase of heroin.

Q So in other words, since September 3rd, you have not discussed this with anybody; is that correct?

A Since that time, most definitely not.

Q You indicated on direct examination yesterday that you had occasion to see Mr. Di Napoli after he was arrested the evening of February 3, 1972. In fact, after he was arraigned the following day, February 4; is that correct?

A Yes, sir.

Q When was the first time that you saw him after February 4, 1972?

A The end of February, in St. Croix, the Virgin Islands.

Q And at the time, had the complaint been dismissed?

1
2 A No, sir; not to my knowledge.

3 Q The complaint had not been dismissed?

4 A No, sir.

5 Q Didn't you testify yesterday that you never
6 met Mr. Di Napoli while this case was still pending?

7 THE COURT: When you are talking about this
8 case, you are referring to the complaint?

9 MR. PHILLIPS: Yes.

10 A I don't recall saying that.

11 Q Let me see if I can refresh your recollection.

12 MR. LOPEZ: Your Honor, may we have the date
13 for the dismissal of the complaint, when it was actually
14 dismissed?

15 MR. PHILLIPS: Your Honor, I object to
16 Mr. Lopez interrupting cross-examination.

17 MR. LOPEZ: I am making an objection.

18 Q (Continuing) Yesterday, didn't you testify as
19 follows --

20 THE COURT: What page is this?

21 MR. PHILLIPS: Page 251, your Honor.

22 Q (Continuing) "Q After February 3, 1972, did
23 you get to meet Joseph Di Napoli on several occasions?

24 "A I did.

25 "Q Was this while this case was still

pending?

"A There was no case pending when I met Mr. Di Napoli."

A Yes. I recall making that statement.

Q Was that true?

A Now that you bring it to my attention, the first time that I met him afterwards, it's not. In other words, there's a discrepancy there.

Q In other words, the first time that you met Mr. Di Napoli was prior to the complaint being dismissed in this case?

A Yes, sir; it was.

Q And that was in St. Croix, the Virgin Islands?

A Yes, sir.

Q And that was at the end of February 1972?

A I believe the last week of February. I don't know the exact date.

Q Was yesterday the only time that you have ever made a statement that you never met Mr. Di Napoli while the case was still pending?

A I don't know.

Q Isn't it a fact that you also told Inspector Compariati on October 8, 1973, that you never met Mr. Di Napoli while the case was still pending?

1
2 A I can't recall saying -- saying that to
3 Inspector Comperiatì.

4 Q Let me just move on a minute, and I will get
5 back to this, Officer Spurdis.

6 What was the purpose of seeing Mr. Di Napoli
7 St. Croix in the Virgin Islands at the end of February 19

8 A That was a by-chance meeting.

9 Q By-chance meeting?

10 A Yes.

11 Q And that was the first time you saw him after
12 the arraignment?

13 A Yes, sir.

14 Q Whom were you with there?

15 A My wife, my child and my wife's sister.

16 Q And did you socialize with him after you had
17 occasion to meet him by chance in St. Croix? That is, did
18 you socialize with him while you were down here in
19 St. Croix?

20 A What is your interpretation of "socialize"?

21 Q Did you go to dinner with him?

22 A No, sir.

23 Q How long did you see him in St. Croix?

24 A Possibly one or two minutes, on the street.

25 Q Did you see him again in St. Croix?

2 A No, sir.

3 Q How long were you in St. Croix?

4 A I believe five days.

5 Q That was on vacation?

6 A Yes, sir.

7 Q Did you report the fact that you met him in
8 St. Croix to your superiors?

9 A I did not.

10 Q Did you see Mr. Di Napoli after that?

11 A Yes, sir, I did.

12 Q Where was the next place that you saw him?

13 A In Bronx County.

14 Q Whereabouts?

15 A I believe the next place that I met with
16 Mr. Di Napoli was at the Carvel ice cream stand which is
17 at Bronxdale Avenue and Morris Park.

18 Q Did you call him or did he call you to set up
19 that meeting?

20 A I called Mr. Di Napoli and asked if he wouldn't
21 come out and speak with me.

22 Q And did you speak with him?

23 A Yes; I did.

24 Q For how long?

25 A A few minutes.

Q What was the purpose of meeting with him on that occasion?

A I was trying to cultivate Mr. Di Napoli to be an informant.

Q Did you report that meeting to your superiors?

A I did not.

Q Did you tell your superiors before you went there that you were going there to meet Mr. Di Napoli?

A No, sir.

Q Isn't that somewhat irregular?

A No, sir.

Q When was the next time that you met him?

MR. PHILLIPS: Withdrawn.

Q The meeting at Carvel's; was that after or before the complaint had been dismissed?

A To my knowledge, after.

Q And when did it occur?

A Well, I believe it was the first part of March when I was notified that the dismissed -- that the complaint was dismissed, that there were no criminal charges pending against Mr. Di Napoli.

Q And you are sure that the meeting took place after the complaint was dismissed?

THE COURT: Well, let me find out. The last

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question was a little vague.

(To the witness) When did the meeting take place?

THE WITNESS: Some time in March.

THE COURT: Some time in March.

All right.

MR. LOPEZ: Excuse me, your Honor; I am sorry. Was your Honor's question: when was the complaint dismissed?

THE COURT: No. "When did the meeting take place?"

MR. LOPEZ: Your Honor, may we have the date -- I haven't been able to find it -- that the complaint was dismissed? Why should we be in a position --

MR. PHILLIPS: Your Honor, I object --

THE COURT: Not yet.

Q How soon after you met with Mr. Di Napoli or ran into him in St. Croix did the meeting at Carvel's take place?

A Maybe the middle of March.

Q Did you understand the question? How soon after the meeting in St. Croix, which you said took place the end of February, did the meeting at Carvel's take place?

A Well, first of all, I object to you saying that's a meeting in St. Croix. You are making it sound

1
2 like it was some pre-arranged thing.

3 THE COURT: Please. All we are trying to do
4 is get the facts. Something happened in St. Croix. You
5 saw him. How long after that did you see him at the Carve
6 ice cream stand?

7 THE WITNESS: I'll take a guess of three or
8 four weeks.

9 Q Didn't you just say a minute ago that you
10 thought that the meeting at Carvel's took place some time
11 towards the beginning of March?

12 A Some time during March, yes.

13 Q And you are sure about that?

14 A As sure as I can be, sir.

15 Q You are sure that you did not meet him at
16 Carvel's until after you were informed that the complaint
17 had been dismissed; is that correct?

18 A Yes, sir.

19 Q Do you know when the complaint was dismissed?

20 A At the beginning of March, to my knowledge.

21 Q Are you sure about that?

22 A As sure as I can be.

23 MR. PHILLIPS: May this be marked as a Government
24 Exhibit?

25 (Government's Exhibit 5 was marked for identifi

xxx

1
2 cation.)

3 Q I show you what has been marked as Government's
4 Exhibit 5 for identification. Can you identify that docu-
5 ment, Officer Spurdis?

6 Do you know what that document is?

7 A It's a Bureau of Narcotics and Dangerous Drugs
8 document.

9 Q It's a particular form that's used; isn't it?

10 A Yes.

11 Q Would you tell us what type of form it is?

12 A It's a chronological list of events after a
13 person is arrested, that is, the person being arraigned in
14 court and the bail that would be set if they are released
15 and so forth, until the time the person is dismissed -- or
16 the case is disposed of.

17 Q Is there anything in that document that would
18 refresh your recollection as to when the complaint was dis-
19 missed as to Mr. Di Napoli?

20 A It states April 1st of 1972.

21 Q Does that refresh your recollection as to when
22 the complaint was dismissed as to Mr. Di Napoli?

23 A No, sir.

24 Q Is it still your testimony that you met
25 Mr. Di Napoli at Carvel's after the complaint was dismissed?

1
2 A That was my understanding; that the complaint
3 was dismissed.

4 Q Is it still your testimony that you met
5 Mr. Di Napoli at Carvel's during March of 1972?

6 A Yes, sir.

7 MR. LOPEZ: Your Honor, at this time may I take
8 a look at that document, Government Exhibit 5?

9 THE COURT: Surely.

10 MR. LOPEZ: Thank you.

11 THE COURT: Is that being offered, by the way?

12 MR. PHILLIPS: No, your Honor.

13 THE COURT: When was the next meeting that you
14 had with Mr. Di Napoli after the meeting at Carvel's?

15 THE WITNESS: Some time in April.

16 Q Where did that take place?

17 A I don't know.

18 Q Could it have been at a movie house at New
19 Rochelle?

20 A There were, I believe, two or three meetings
21 at -- around the movie houses at New Rochelle, yes.

22 Q Did they all take place in April?

23 A No, sir.

24 Q When did they take place, these two or three
25 meetings at the movie house in New Rochelle?

1
2 A In total, I think maybe -- June, April, May --
3 June. I didn't meet with Mr. Di Napoli very often.

4 Q Did any of them take place in a boat?

5 A I don't know if I did meet him there in April.

6 Q And what was the purpose of these two or three
7 meetings at the movie house in New Rochelle?

8 A In each and every instance when I met with
9 Mr. Di Napoli it was conversation that I was trying to
10 gain information from him.

11 Q Did you tell your superiors before you met
12 with him that you were going to meet with him?

13 A No, sir.

14 Q Did you tell your superiors after you met with
15 him that you had met with him?

16 A No, sir.

17 Q You also had occasion to meet Mr. Di Napoli at
18 a diner in Larchmont?

19 A Yes; I did.

20 Q How many occasions?

21 A Once.

22 Q Was that for the purpose of trying to gain
23 information from Mr. Di Napoli?

24 A Yes, sir.

25 Q Did you tell your superiors that you were

going to meet him at the diner in Larchmont?

A No.

Q Did you tell your superiors after you had met him that you had met him?

A No, sir.

Q And when did that meeting take place, if you can recall?

A The end of May, the beginning of June.

Q And you were attending these meetings for the purpose of attempting to make Mr. Di Napoli an informant; is that correct?

A Yes, sir.

Q And you never told your superiors that you were attempting to do this?

A No, sir.

Q Every meeting that you had after the events of February 3rd and 4th of 1972 with Mr. Di Napoli; were they for the purpose of attempting to make Mr. Di Napoli an informant or get information from him regarding narcotics activity?

A No, sir.

Q There were meetings that had other purposes?

A I had gone over to Mr. Di Napoli's house with my wife.

1
2 Q When did that occur?

3 A When he had moved to New Rochelle, July.

4 Q 1972?

5 A 1972.

6 Q Were you invited to go there by Mr. Di Napoli?

7 A YES, sir; I was.

8 Q You went there with your wife?

9 A Yes, sir.

10 Q On how many occasions?

11 A Once. Maybe twice, but I recall once specifi-
12 cally with my wife.

13 Q And was the purpose of your going to
14 Mr. Di Napoli's house to gain information, or was this a
15 social purpose?

16 A The first time that I went to see Mr. Di Napoli
17 it was to gain information. On the second occasion, that's
18 the occasion I recall coming with my wife, specifically.
19 That was to have a cup of coffee.

20 Q And was anybody there besides Mr. Di Napoli?

21 A His wife, Jean; the children.

22 Q Jean Patalano?

23 A Patalano.

24 Q That's not exactly his wife, is it?

25 MR. LOPEZ: Objection, your Honor.

1
2 THE COURT: I don't care whether it is or it
3 is not.

4 MR. LOPEZ: It is immaterial.

5 THE COURT: That is what I said.

6 MR. LOPEZ: I am sorry, your Honor. Thank you
7 very much.

8 (continued on page 307.)
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2 Q Did your wife on any occasion go shopping with
3 Jean Patalano?

4 A To my knowledge, yes.

5 Q When was that?

6 A I don't know.

7 Q Did your wife ever go on vacation with Jean
8 Patalano?

9 A Once with Jean Patalano

10 Q Where did they go?

11 A Disneyland, Florida.

12 Q When did that occur?

13 A The fall of 1972.

14 Q Did you also have occasion to visit Jean Patalano
15 with your wife when Mr. Di Napoli wasn't at home?

16 A I did.

17 Q When did that occur?

18 A At various times.

19 Q What was the purpose-- at various times? It
20 happened a number of times, then?

21 A More than once, yes.

22 Q What was the purpose of those visits?

23 A Social.

24 Q After the events of February 3rd and 4th, 1972,
25 did you continue to work under the supervision of Peter

1
2 Pallatroni and his group?

3 A It wasn't too long after, where Agent Pallatroni
4 was transferred from the New York Joint Task Force.

5 Q Back to the Drug Enforcement or what was then
6 known as the Bureau of Narcotics and Dangerous Drugs?

7 A Yes, to the main office.

8 Q Where is is currently a group supervisor there
9 now, is that correct?

10 A I believe he is now, yes.

11 Q And did you get along with Mr. Pallatroni after
12 the events of February 3rd and 4th, 1972 and before he
13 was transferred back to the Bureau of Narcotics and Danger-
14 ous Drugs?

15 A I never got along too well at all with Agent
16 Pallatroni.

17 Q You really disliked Agent Pallatroni, didn't you?

18 A I wouldn't say I disliked him. I didn't have
19 too much respect for his ability as a narcotics agent.

20 Q He called you on the carpet a few times, didn't
21 he?

22 A Several times.

23 Q And in fact, you wrote a letter to a gentleman
24 by the name of John Ingersoll about Mr. Pallatroni, didn't
25 you?

1
2 A And other people, yes.

3 Q Who is John Ingersoll, so the Court knows, whom
4 you are talking about?

5 A At the time, Mr. Ingersoll was the head of the
6 Bureau of Narcotics and Dangerous Drugs.

7 Q Of the entire bureau for the country?

8 A Yes, sir.

9 Q And his office was in Washington, D. C.?

10 A That's correct.

11 Q And you wrote a letter to him complaining about
12 Mr. Pallatroni, is that correct?

13 A And others.

14 Q You still continue to dislike Agent Pallatroni,
15 is that correct?

16 A I have no contact with the man so I have no
17 feelings for the man, one way or the other.

18 Q Now, when did you first recognize Vincent Papa
19 on the evening of February 3rd, 1972?

20 A After he had parked the vehicle and was in about
21 the middle of the street.

22 Q You recognized him to be Vincent Papa?

23 A Yes, I did.

24 Q How did you recognize him to be Vincent Papa?

25 A I slowed my vehicle down alongside of him, rollin

the window down, and Mr. Papa looked in my direction.

Q Whom did you know him to be at that time?

A Vincent Papa.

Q What information did you have about him?

A There was a current investigation by other members of Group 2 in the New York Joint Task Force. That was from Charlie Rinaldi, a state police investigator, Jerry Za;;alo and Joseph Flannery. He is a federal agent also.

Q Did you have information that Vincent Papa was a street dealer in narcotics?

A He was suspected of dealing in narcotics, yes.

Q On what level?

A A high level.

Q How high?

A I don't know.

Q And you knew that before you saw him on the evening of February 3rd, 1972?

A Yes, sir.

Q And you knew him to have a reputation as a large or big violator of the narcotic law, is that correct?

MR. LOPEZ: Objection, your Honor. Already asked and answered.

THE COURT: It is cumulative. But go ahead.

1
2 Answer it.

3 A I had knowledge that he was suspected of being
4 narcotics trafficker, yes.

5 Q Was there anything about his background and
6 anything that occurred after the automobile that he drove
7 up in parked that made you suspicious?

8 A After?

9 Q Yes.

10 A Just seeing him on the street where I had never
11 seen him before.

12 Q That made you suspicious?

13 A Yes, sir.

14 Q Didn't the fact also that a person going into
15 the house with a suitcase add to your suspicions?

16 A That was the second party. That wasn't Mr. Papa
17

18 Q But didn't that add to your suspicions?

19 A Yes, sir, it did.

20 Q Because he got out of an automobile that Papa
21 had driven, isn't that correct?

22 A Yes, sir.

23 Q Were you also aware of the information that
24 Stanton Garland -- you know who he is, don't you?

25 A Yes, sir.

Q Were you also aware of any information that

Garland had given with respect to Papa?

A My only information that I know from Stanton Garland would be what I was told from brother officers. I had nothing to do with that case.

THE COURT: Yes, but did the brother officers tell you that Stanton Garland had said such and such?

THE WITNESS: Yes, there was conversation regarding Stan Garland.

THE COURT: All right.

What was the such and such?

THE WITNESS: To the best of my recollection, Stanton Garland claimed that Mr. Papa was engaged in the trafficking of narcotics and this is after we had arrested Stanton Garland. He was now a defendant. In fact, he was a double defendant, because he already had a case on him.

After we arrested him, he gave information to the group that I had hearsay from that Mr. Papa was engaged in the trafficking of narcotics.

This is where Flannery, Zappalo and Rinaldi started their investigation into Mr. Papa's activities.

Q And did Garland give you information from which you understood or from which you were able to conclude that Papa was a dealer in narcotics involving multi-kilogram quantities?

2 A I never personally spoke to Garland. At no time.

3 Q I know, but was such information conveyed to you
4 by other officers?

5 A That Mr. Papa was engaged in dealing in multi-
6 kilograms of heroin?

7 Q Quantities of heroin?

8 A Quantities of heroin?

9 Q Yes.

10 A Yes.

11 Q The answer is yes?

12 A Yes.

13 Q Now, was it you or Officer Reilly who used the
14 radio to contact Pallatroni about Papa being there?

15 A I did.

16 Q And did you-- you did not tell Pallatroni on the
17 radio that it was in fact Papa, did you?

18 A I used the initials VP.

19 Q Not VIP?

20 A No, sir.

21 Q You are sure about that?

22 A That's the best I can recall, the initials VP.

23 Q And why didn't you come out and tell Pallatroni
24 what his name was on the radio?

25 A Because those radios could be monitored.

Q By whom?

A By anyone, any ham operator could tune in on that channel.

Q And while you were with the Task Force was it also your practice to disguise names of targets or suspects or other defendants when you radioed to another car?

A Yes.

Q Later on that evening, I believe prior to your arresting Papa and Di Napoli, you had a conversation with Pallatroni, is that correct, while you were following the automobile?

A Yes.

Q And in substance, I believe you testified on direct that Pallatroni left the decision whether to make the arrest up to you, is that correct?

A That is positively correct.

Q And did you have any discussion at all with Officer Reilly as to whether or not the car that Papa and Di Napoli were driving in should be pulled over?

A Yes, I did.

Q And what was that discussion?

A To the best of my recollection, I told George Reilly, my partner, that if that suitcase contained clothes or underwear or anything like that that wasn't illegal we

1
2 were going to be in a lot of trouble.

3 "Do you still want to go along and hit the car?"

4 And Officer Reilly said, "Whatever you say, John."

5 Q And then you made the decision to pull the car
6 over, is that correct?

7 A That's correct.

8 Q And you also indicated that you made some communi-
9 cation to Pallatroni, where you used an obscene word, is
10 that correct?

11 A Yes, sir.

12 Q And did that occur before or after this conver-
13 sation that you have just related with Reilly?

14 A This would be after, when the cars were in move-
15 ment.

16 Q This would be after the conversation you just
17 testified about with Reilly?

18 A Yes.

19 Q Are you sure about that?

20 A To the best of my recollection, we had this
21 conversation where we were sitting there deciding what to
22 do, myself and Officer Reilly.

23 Q You and Reilly?

24 A Yes.

25 Q And after you had that conversation, what did you

do?

A Sat in the car and we waited until Mr. Papa and Mr. Di Napoli came out of the house.

Q And the conversation then that you are just testifying about happened before they got into the automobile?

A To the best of my recollection, yes.

Q Well, did you have any further conversation with Reilly after Papa and Di Napoli got into the automobile as to whether or not the car should be pulled over?

A Not that I could recall specifically.

Q Did Mr. Pallatroni ask you, after--

MR. PHILLIPS: Withdrawn.

Q After Papa and Di Napoli got into the green Pontiac, did you follow the car?

A What had taken place was --

Q Just answer the question. Did you follow the automobile, the green Pontiac that Di Napoli and Papa got into?

A When they first drove off, no.

Q Did you thereafter follow the automobile?

A After Pallatroni dropped off, I did.

Q And did you have a conversation with Pallatroni as to whether or not the vehicle should be pulled over while you were following the car?

1
2 A Just that one-- there was some conversation
3 where Agent Pallatroni, I believe he wanted to follow the
4 car, to see where it was going.

5 Q Did Pallatroni ask you what your intentions were
6 with respect to the automobile that Papa and Di Napoli were
7 in?

8 A We had that conversation on the street, yes.

9 Q On the street, but not over the radio?

10 A Over the radio also.

11 Q And when did it occur over the radio?

12 A At various times. This is-- it was a very brief
13 thing.

14 Q And did you convey to Pallatroni that it was your
15 decision to stop the car and search the suitcase?

16 A That's correct.

17 Q Did you convey that to him over the radio?

18 A I did.

19 Q Did you use those words that I just used?

20 A I would think that--

21 Q Tell us exactly what you said to Pallatroni?

22 A I think those were the words I used.

23 Q Tell us what words you used as best you recall.

24 A "We are going to stop the car and search it."

25 Q And did you have any communication with Pallatroni?

after that?

A Just when he lost it. He lost the car and there was one other conversation where he said, "You have got to catch up with it."

Q And what did you say to that?

A I had already known that. I didn't have to answer that question.

Q So you did not have any further communication with him other than the statement that he just made?

A To the best of my recollection, no, sir.

Q And was that the full extent of the conversation you had over the radio with Pallatroni after Papa and Di Napoli got into the car?

A Up until the time we did stop the vehicle, yes.

Q And is it your testimony that Pallatroni made no attempts to persuade you, one way or the other, as to whether or not you should pull the car over and search it and search the suitcase?

A There was conversation whether we did have a right to do it.

Q Will you answer my question, Officer Reilly?

A I am not Reilly.

Q Did he attempt to persuade you as to whether you should pull the car over?

1
2 A Sir, I am not Reilly.

3 Q Officer Spurdis, did he attempt in any way to
4 persuade you to pull the car over?

5 A Persuade me to do it?

6 Q Yes.

7 A It was my impression that he didn't want me to
8 stop the car.

9

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Q Did he attempt to persuade you to pull the car over?

A Does that mean did he want me to do it?

THE COURT: Yes, in any way did he indicate that he wanted you to do it?

A No, sir.

Q When did you say to Pallatroni, "Fuck you, I'm going to pull the car over"?

A I believe when the car started to move.

Q When the car started to move, and what was that in response to?

A This was in response to Agent Pallatroni's thoughts of following the car.

Q What did he say in that respect?

A That he was going to follow the car.

Q And what did you say?

A You have just said it, sir.

Q By the way, do you own an automobile?

A I own two automobiles.

Q What kind of cars are they?

A One is a Buick and one is a Mercedes Benz.

Q What year is the Mercedes Benz?

A 1970.

Q Did you buy that new?

1
2 A No, sir.

3 Q How much did it cost you?

4 A Approximately \$5,000.

5 Q What year is the Buick?

6 A A 1972.

7 Q Did you buy that new?

8 A Yes, sir.

9 Q How much did that cost you?

10 A \$3,000.

11 Q Are you living alone at the present time?

12 A Yes, sir, I am.

13 Q Did you ever see Di Napoli between September 2,
14 1971 and February 3, 1972?

15 A What was the last date, September--

16 Q September 2, 1971 and February 3, 1972.

17 A I believe one time at his residence, 3144 Spence
18 Drive.

19 Q Did you have a conversation with him?

20 A No, sir. I was with my partner, George Reilly.

21 Q And you were on surveillance?

22 A Yes, sir.

23 Q Did you see him on any other occasion?

24 A Not that I could recall, no, sir.

25 Q Do you have a problem being able to recall whether

or not you saw him on any other occasion during that period of time?

A Not that I can remember seeing him, only to the point that I just related to you, and I don't know the date of when it was.

Q Isn't it a fact that you saw him on the evening of September 2 or 3, whichever it was, in the Cottage Inn?

A No, sir.

Q Isn't it a fact that John Doe No. 3 was Joseph Ni Danpoli?

A Most definitely not.

Q Between that time-- I am referring to that evening in September, be it the 2nd or the 3rd, in the Cottage Inn-- are you sure or are you unable to recall whether you saw him more than once until February 3, 1972?

A I can only recall one other time.

Q And that was?

A That one time at 3144 Spencer Drive.

Q And that was when you were with Officer Reilly?

A With Officer Reilly.

Q Who was driving the automobile that you and Reilly were in at the time you pulled Papa's automobile over?

A George Reilly.

Q No question in your mind about that?

A Positively not.

Q Do you recall whether or not Pallatroni and his part , Agent Reed, left the area of 1908 Bronxdale Avenue while you were conducting surveillance there at any time?

A Yes, sir, they did.

Q Doyou know where they went?

A I know from what they told me where they went.

Q When did they tell you where they had gone?

A I believe that same evening.

Q Did they tell you that they had followed somebody and that the person had gone in a circle?

A Yes, sir.

Q When did they tell you that, after the arrest had been made or before?

A I believe when they returned back into the area of 1908 Bronxdale Avenue.

Q Did they tell you that on the radio or in person?

A I am just guessing in person. I am not sure because I had many conversations with Agent Pallatroni on the street.

Q Did Agent Pallatroni check out the license plate of the green Pontiac, to your knowledge?

1
2 A I don't know if he did or if we did.

3 Q Was it checked out prior to the arrest being
4 made?

5 A It was put in the computer. I don't recall if
6 it came back or not.

7 Q To this date do you know where the license plate
8 was checked out to?

9 A Yes, sir.

10 Q Was it a leasing company in Queens?

11 A I believe it was a car dealership in Queens,
12 Wild's Motors, in Queens or Brooklyn.

13 Q Was it a leasing company, if you know?

14 A I don't know. As I say, I believe that it was
15 a dealership, a car dealership, not a leasing company.

16 MR. PHILLIPS: Your Honor, may I have Government
17 Exhibit 4, I believe. I think your Honor has it.

18 Q In any event, did Pallatroni tell you prior to
19 the arrest, at any time prior to the arrest, that he had
20 checked the car out?

21 A I don't know.

22 Q You just don't recall that?

23 A I just don't recall.

24 MR. PHILLIPS: I have nothing further at this
25 time.

1 THE COURT: All right. We will take a break.

2 Let me have that exhibit.

3 Take 15 minutes, gentlemen.

4 (Recess.)

5 (In the robing room; Mr. Phillips, Mr. Fortuin
6 and Mr. Lopez present.)

7 THE COURT: I have gone through this very rapidly
8 "this" meaning Government Exhibit No. 3 marked for identi-
9 fication.

10 My understanding of the rule is that once a docu-
11 ment is shown to a witness to refresh his recollection the
12 opposing attorney is entitled to see the document to see if
13 he can use some part of it to refresh recollection.

14 I will say, however, there are items in this
15 document, Mr. Lopez, which have absolutely nothing to do
16 with this. In fact, they have nothing to do with the en-
17 tire case.

18 What I am going to suggest is we take a luncheon
19 break now, have Mr. Phillips go through it, tell me what
20 he thinks. If it has any bearing whatsoever, I will let
21 you see it. If it doesn't, no.

22 Is that agreeable? I am not forcing you to do
23 it right now.

24 MR. PHILLIPS: Your Honor, the government is not
25

offering this document.

THE COURT: I am aware of that.

MR. PHILLIPS: Further, the government has no objection to Mr. Lopez seeing the entire document.

THE COURT: The whole thing?

MR. PHILLIPS: Yes.

THE COURT: All right.

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MR. PHILLIPS: What the government was oppose to was during cross-examination looking at documents. It seems to me, as I understand the rule, you can show a witness anything, including the Manhattan telephone book, and ask him if it refreshes his recollection, and counsel is not entitled to see it until it is offered or until it comes time for counsel to refresh his recollection on redirect.

THE COURT: You don't have any objection to any of this?

MR. PHILLIPS: No. We are not offering it. What we intend to offer in rebuttal -- I have already told Mr. Lopez this and asked him if he would be willing to stipulate to its authenticity or accuracy -- is a portion that I have underlined in here, and we have Inspector Comperiatì in the courtroom prepared to testify as to that portion, as to what he said. I am not offering the exhibit itself.

THE COURT: All right. Now you are in charge of reading the entire document and disregarding those things which have no bearing on this case.

MR. LOPEZ: Right. I am only interested in February 3, 1972. I will look at the entire document and see what use I can put it to as to the issue that is before

your Honor.

THE COURT: Yes. I am sure that you don't care about this witness' relationships with his wife and who uses whose car and so on and so forth.

MR. LOPEZ: No. I really don't care.

Your Honor, I would say this as far as this hearing is concerned, if I may just say one thing: I think that there may be two or three witnesses left here. So I think we are going to go through the afternoon possibly and hopefully finish today.

I would ask, your Honor, if at all possible, that the defense be permitted to submit their memorandum of law at 9:00 o'clock on Monday or at 9:30, because there are quite a number of cases. It's the statement of facts that's bothering me. I have already a number of cases which I would like your Honor to consider.

Actually, even if we started picking the jury on Monday, it's not necessary really even for your Honor to have made a decision on the suppression motion, since actually we won't be going into the trial evidence until much later, if we start on Monday morning at 10:00 o'clock.

THE COURT: You forget we have other motions. There are still outstanding suppression motions which have not been decided.

1 jhd3
2 MR. LOPEZ: Right.

3 THE COURT: By the way, will you be ready on
4 Monday for those, the other suppression motions?

5 MR. PHILLIPS: Is your Honor referring to the
6 Springer suppression motion or is your Honor referring to
7 the Inglese suppression motion that I received a copy of
8 yesterday?

9 THE COURT: There is one even further than
10 Inglese and Springer; Mary Jane Elizabeth Salvani.

11 MR. PHILLIPS: I would suggest with respect to
12 that motion, as I had said with respect to motions to
13 suppress statements such as Tramunti's motion, while there
14 is a distinction between those two motions, I represent to
15 the Court that we do not intend to use those statements
16 and we still don't intend to use those statements.

17 THE COURT: As to whom?

18 MR. PHILLIPS: Tramunti and I think Hattie Ware.

19 In any event, we do intend to introduce
20 narcotics that was found in Mary Jane Salvani's apartment.
21 If your Honor wants to hold that hearing before trial we
22 will be prepared to go ahead Monday, as well as with the
23 Springer motion, if your Honor wants a hearing on it.

24 THE COURT: I think we should. It shouldn't
25 take too long, I hope.

MR. FORTUIN: With respect to the Springer motion, we have submitted an affidavit and memorandum which opposes a hearing.

THE COURT: I was served last night or I received last night a raft of papers from Mrs. Nancy Rosner. Hopefully I will have the government's views on that on Monday also.

MR. PHILLIPS: I can refer your Honor right now to the case of United States versus Tortorello, specifically, footnote, I believe, 18 or 19, a case that was decided this year, I think it was last summer -- by "this year" I mean 1973 -- where the Court of Appeals appeared to clearly modify their statement in the Birrell footnote that has been referred to before your Honor with respect to whether a hearing should be held prior to trial or after trial of this type.

THE COURT: Mr. Lopez, in connection with Mrs. Rosner's motion, as lead counsel, I am advising you, and hopefully you will advise the others, this is not a motion which everybody else is joining in to my mind. If anybody else has a motion along these lines, they can make it. I will not suggest they use Mrs. Rosner's motion as an example, however.

MR. LOPEZ: Right.

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2 MR. FORTUIN: So I may be clear, on the
3 Springer motion have you decided that a hearing should be
4 held?

5 THE COURT: No, not yet. Be ready for one, a
6 way.

7 MR. LOPEZ: What I would suggest, your Honor
8 is this, that in the event that we have an evidentiary
9 hearing on the Springer motion or any other pre-trial hea-
10 rings, that all counsel come in at 10:00 o'clock on Monday.
11 Otherwise we are going to have a disappearing act. It's
12 tough to get them together.

13 At least we can use part of that time for sea-
14 ing arrangements and to hear all their little problems and
15 everything.

16 THE COURT: I am in full agreement. I have no
17 intention of releasing anybody on Monday at 10:00 o'clock.

18 MR. PHILLIPS: And all defendants are expected
19 to be present.

20 MR. LOPEZ: Absolutely.

21 THE COURT: All right. This government's
22 Exhibit No. 3 for identification goes on for 44 pages.

23 MR. LOPEZ: Is it all right if I read it now,
24 over the luncheon recess?

25 THE COURT: See you back here at 2:00 o'clock,
gentlemen.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4530

THE COURT: As to Mr. Lopez and other counsel in this particular motion, you are released for a luncheon break. Please be back at 2:00 o'clock.

I have already advised Mr. Lopez I received a motion from Mrs. Posner yesterday. That motion I will not permit all counsel to join in. If you have the standing to make such a motion, make it on your own.

MR. STOTSINBURG: With all due respect, your Honor, I don't know what motion that is.

THE COURT: You are invited to take a look at it. Who is in charge? All right, Mr. Stotsenburg. You are in charge of it. Step outside and show it to other counsel. Make sure it gets back to me so I can rule on it.

MR. STOTSINBURG: May I address the Court for one moment? I have been given a copy of an order dated today, January 11th, and I assume your Honor has just received it; that as to my client, Mary Jane Elizabeth Salvani, against whom no overt act or substantive crime is alleged, the government is required to set forth particulars as it would for an overt act, including time, place and persons present.

I wonder, in view of the fact that Mr. Phillips is present, could we know when I might have those particulars, because we are supposed to try the case --

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2 THE COURT: Mr. Phillips hasn't received a
3 copy of that order up to this point. He is going to have
4 to have some time to get together those particulars, and
5 I am not going to force him to do it right now.

6 MR. STOTSENBERG: Very good, sir. I will write
7 your Honor a letter summarizing my request for a severance

8 MR. DCWD: Your Honor, I would like to call the
9 Court's attention to the fact that we have filed a sub-
10 stantially similar motion in connection with our original
11 omnibus motions back in November, similar to the Rosner
12 motion.

13 THE COURT: Yes.

14 MR. PHILLIPS: Your Honor, I would just like to
15 state for the record that if Mr. Stotsenburg is asking for
16 more particulars as to what Mary Jane Elizabeth Salvani's
17 role is, I told him that exactly two months ago, when I had
18 a discussion with him in my office regarding whether or not
19 she was going to testify as a government witness, at which
20 time I was under the impression that she was, and I told
21 him in great detail what her role was and what her involve-
22 ment was and what the testimony of the government would be
23 and what the proof of the government would be.

24 MR. STOTSENBERG: That is not correct, sir.

25 THE COURT: I am not going to get into a discus-

1 mpd3
2 sion on this --

3 MR. STOTSENBERG: I just wanted the record to
4 reflect that.

5 THE COURT: Mr. Stotsenburg, I don't want to
6 get into discussion about it. There is an order on the
7 record.

8 MR. DOVE: Your Honor, at this late date, I
9 don't know what the proof is going to be. I still have
10 only two objective facts with respect to my client's con-
11 nection with this case, and I am supposed to start a trial
12 Monday. I must say that it is impossible for me to be
13 ready on Monday.

14 THE COURT: We will see about it on Monday.

15 MR. STOTSENBERG: Am I correct, sir, if anyone
16 asks me --

17 THE COURT: If you have any basis whatsoever --
18 why don't you step outside and take a look at this and make
19 sure I get it back..

20 (A luncheon recess was taken.)
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AFTERNOON SESSION

2:00 p.m.

(In the robing room; present: Mr. Dowd and Mr. Phillips)

MR. DOWD: Your Honor, this is an application that I make which I haven't made before, and I apologize. It has been my inadvertence. The application is to be admitted for the purposes of this case in the Federal Court.

THE COURT: Mr. Phillips, do you so move?

MR. PHILLIPS: I so move.

MR. DOWD: I apologize, your Honor, for not telling you earlier. I just neglected to.

THE COURT: There's no problem.

(In open court.)

THE COURT: Mr. Lopez, you have had a chance to review, have you not, Government's Exhibit ??

MR. LOPEZ: Yes; I have, your Honor.

Mr. Phillips has turned it over to me, and I have read it, and if Mr. Phillips is finished with Mr. Spurdis, I am ready to ask a few more questions, and I am ready to ask those now.

MR. ELLIS: May it please the Court, your Honor, I understand that an order was entered today granting certain of the defendants additional particulars. My own

1 was not included in that group. Does that mean the request
2 was not --

3
4 THE COURT: If you have not received notifi-
5 cation, the order is still under consideration.

6 MR. ELLIS: Thank you, your Honor.

7 Your Honor, it was just handed to me now, and
8 I see that it is denied.

9 We also have a motion for a severance, your
10 Honor, which hasn't been acted upon.

11 THE COURT: I understand that. It will be.

12 MR. ELLIS: Thank you.

13 J O H N S P U R D I S, resumed.

14 CROSS-EXAMINATION CONTINUED

15 BY MR. PHILLIPS:

16 Q Officer Spurdis, was it you or Patrolman Reilly
17 who signalled Papa to pull his vehicle over to the curb?

18 A I did.

19 Q Are you sure about that?

20 A Yes, sir.

21 Q Do you recall being interviewed by Captain Howe
22 of the New York Joint Task Force on March 2, 1972?

23 A No, sir.

24 MR. PHILLIPS: May this be marked as Government
25 Exhibit 6 for identification, please?

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Spurdis-cross

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(Government Exhibit 6 was marked for identification.)

Q Are you familiar with what a standard departmental recognition request is?

A Yes, sir.

Q And what is it?

A That's if you do something good, you get a little bar, a little award for it.

Q And are you interrogated about the events which you are getting the bar or the citation for?

A Usually.

Q And did you receive some citation or bar in connection with the events of this investigation?

A I did.

Q And were you interrogated or interviewed by anybody prior to receiving such a citation?

A By Captain Howe.

Q Did that interview take place on March 2, 1972?

A I don't know.

Q I show you Government Exhibit 6 for identification and ask you if that refreshes your recollection as to whether you were interviewed by Captain Howe on that date, in this connection.

Mr. Spurdis, can you answer the question now?

1 A Yes. That's the date that you indicated and
2
3 where the interview took place.

4 Q Can you answer my question? Does it refresh
5 your recollection that you were interviewed by Inspector
6 Howe on March 2, 1972?

7 A Yes, sir. Captain Howe did interview me on
8 that date.

9 Q And at that time did you tell Captain Howe that
10 it was Patrolman Reilly that signalled Mr. Papa to pull
11 the car over to the curb?

12 A Yes, sir; that's what it says here.

13 Q Which is accurate: what you said today or what
14 you said to Captain Howe in March of '72?

15 A My statement today.

16 Q And what you said to Captain Howe in March of
17 1972 was not accurate?

18 MR. LOPEZ: Objection, your Honor. We haven't
19 heard that the witness said that to Captain Howe.

20 THE COURT: He has already said that it is not
21 accurate.

22 MR. LOPEZ: All right, sir.

23 Q Were you mistaken when you said that to Captain
24 Howe?

25 A I must have been; yes.

Q You didn't intentionally tell him something that wasn't true, then; is that correct?

A To make an outright lie?

Q Yes.

A I would never make an outright lie.

Q You were mistaken; is that right?

A It would be a mistake.

Q Were you under the impression at that time that Patrolman Reilly had signalled Papa to pull the car over to the curb?

A Obviously I was.

Q And since then you have concluded that it was you who signalled Papa to pull the car over to the curb; is that right?

A Yes, sir.

Q Did Papa, after the automobile stopped, get out of his car and walk away from it?

A He walked in my direction, yes.

Q Away from his car?

A Away from his car.

Q And did you deem that to be an effort to draw you and Reilly away from his car?

A I did.

MR. PHILLIPS: I have nothing further, your

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Honor.

THE COURT: Mr. Lopez?

MR. LOPEZ: Yes, your Honor. A few questions, your Honor.

May I have Government Exhibits 3, 4, 5 and 6?

MR. PHILLIPS: Just one question I omitted to ask.

BY MR. PHILLIPS (Continued)

Q Officer Spurdis, the citation that you were given was by the Police Department?

A Yes, sir; it was.

Q Was that before or after they found out that you met with Di Napoli on a number of occasions after the arrest?

A Oh, well, before.

MR. PHILLIPS: I have nothing further.

REDIRECT EXAMINATION

BY MR. LOPEZ:

Q Officer Spurdis, how many citations have you received during your police career?

A I'm not sure, sir.

Q Well, can you approximate it?

A 15.

Q And these 15 different citations: can you give

2 us generally what they were for?

3 A On several occasions engaged in shootings,
4 armed robberies, identification of people and apprehension
5 of people that have committed homicides and for narcotics
6 violations.

7 Q And during your police activities, have you
8 ever been shot in the course of duty, wounded in the course
9 of duty?

10 A No, sir.

11 Q Have you ever been shot apprehending suspects
12 or anything like that? That's what I am referring to.

13 THE COURT: Do you mean shot at?

14 Q (Continuing) Shot at or actually injured.

15 A In several cases --

16 MR. PHILLIPS: Your Honor, I don't think this
17 has any relevancy to the credibility of the witness.

18 THE COURT: I will take it.

19 Q On how many occasions, sir?

20 A At least six.

21 Q Now, I draw your attention to Government
22 Exhibit 4 and ask that you look at paragraph 5.

23 A Yes, sir.

24 Q Now, officer, this was a report that I believe
25 you told us was prepared by Agent Pallatroni; is that correct?

A Yes, sir; that's true.

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

mp:mg 1

Spurdis-redirect

Q And this report was signed by you, is that correct?

A That's true.

Q Now, I think Assistant United States Attorney Phillips asked you if you had read the report.

A Yes, sir.

Q And I think your recollection was that you had, is that correct?

A Yes.

Q As you read Paragraph 5, is that correct, that portion which says that you saw Vincent Papa carrying the valise out of 1908 Bronxdale Avenue?

A No, sir, and I had brought it up at the time.

Q You had brought it up to whom?

A To Agent Pallatroni.

Q And you asked him to correct the report?

A I said it was inaccurate.

Q And what did he say, if you recall?

A As best I can recall "Leave it as it is."

Q Well, do you recall if you attempted to make any other corrections as far as this report was concerned, if you recall?

A Well, I know there are other things that I disagreed with at the time.

Q But it was Agent Pallatroni who prepared this report, is that correct?

A Each and every word of it.

Q But you signed it, is that correct?

A I did.

Q All right.

Now, Officer, you had a vacation some time in February 1972, where you went down to the Virgin Islands, isn't that correct?

A Yes, sir.

Q Now, when did you make arrangements for this vacation and to leave? Was it before February 3rd, 1972?

A I don't know. Or around that time.

Q In any event, was your meeting there with Joseph Di Napoli as you have described it, your meeting or your chance meeting -- was it exactly that? A chance meeting?

A Yes, sir.

Q Did you know that Di Napoli was also going to the Virgin Island?

A No, sir.

Q Now, you indicated to us that you felt at one time that when you went down to the Islands that the case pending against Di Napoli and Papa had been dismissed, is that correct?

1
2 A No. I was under the impression that it was still
3 active.

4 Q All right.

5
6 Sometime later you told us that you had another
7 meeting or another chance meeting with Di Napoli, is that
8 correct?

9 A No. The next meeting that I had with Mr. Di Napoli
10 was deliberate. I had called him.

11 Q To meet him, is that correct?

12 A Yes, sir.

13 Q Now, did you know at that time if the instant
14 complaint against Di Napoli and Papa which was filed in
15 the Magistrate's Court on February 4, 1972 was to be
16 prosecuted, had you received any information in connection
17 with that?

18 A I was told it was dismissed.

19 Q In other words, you hadn't seen a formal order of
20 dismissal, is that correct?

21 A No, sir, and I had not appeared in court any
22 more.

23 Q In other words, you weren't even told to come back
24 for the hearing of February 14th, 1972?

25 A February 4th I was in court for the arraignment
of both prisoners.

1
2 THE COURT: The question is the 14th, isn't
3 that it?

4 MR. LOPEZ: Let me withdraw it and rephrase
5 that question and make it a little clearer.

6 Q You appeared in court on February 4, 1972, isn't
7 that correct?

8 A On the 4th, yes, sir.

9 Q And on that date a hearing was set on your com
10 plaint, is that right?

11 A That's right.

12 Q And you were supposed to appear in the middle
13 of February in the Magistrate's Court, isn't that right?

14 A Some time in the middle of the month.

15 Q And were you told not to appear?

16 A Yes.

17 Q And do you recall who told you not to appear?

18 A It would be from the group supervisor.

19 Q And was a reason given to you why you should
20 not appear in the middle of February?

21 A That there would be no necessity for me to be
22 there. That there was going to be no action taken in
23 regard to the case.

24 Q So when you arranged to meet Di Napoli, in your
25 mind, whether a formal order of dismissal in the Magistra

1 Court had been entered, as far as your state of mind was
2 concerned, you thought the case was over, isn't that cor-
3 rect?
4

5 A Well, not until the beginning of March, when I
6 was told it was dismissed.

7 Q But you were told not to bother appearing in the
8 Magistrate's Court, is that right?

9 A During February, yes.

10 Q And did you have any inclination at that time
11 that the whole case was going to be dismissed?

12 A Yes, that is what I was told, that it was going
13 to be.

14 Q Well, did you ever discuss that dismissal with
15 Pallatroni?

16 A Not that I recall.

17 Q Well, didn't you ever speak to any of your
18 brother officers at the Narcotics Bureau? Didn't anyone
19 say, "You took down a million dollars. I told you you
20 couldn't make an arrest on that thing?"

21 Didn't anyone say that to you?

22 A Well, there was conversation that we were going
23 to lose the case, but at least we got the million dollars.

24 Q That was the conversation in the Bureau of
25 Narcotics, isn't that correct?

1 mp:mg 6

Spurdis-redirect

2 A Yes.

3 Q Because in fact you had not found any narcotics,
4 isn't that right?

5 A That's true.

6 Q So that after the chance meeting with Di Napoli
7 in the Islands, when you did meet Di Napoli, you already
8 knew whether or not the case had been officially closed,
9 that it was going to be dismissed and there was going to
10 be a lack of prosecution on it, isn't that correct?

11 A Prior to contacting Mr. Di Napoli some time in
12 March, I was told and I felt positive that the case was
13 disposed of.

14 Q Okay.

15 Now, you remember that departmental trial, when
16 you were represented by Miss Nancy Rosner, isn't that cor-
17 rect?

18 A No. Miss Rosner-- Mrs. Rosner came down at
19 the Internal Affairs Commission hearing.

20 Q Right. At the hearing which was taped, isn't
21 that correct?

22 A Yes, that was tape-recorded.

23 Q And didn't you tell them at that meeting that
24 what you wanted to do was actually take a shot at Vincent
25 Papa?

I refer you to Government Exhibit 3, page 5
(handing).

A Mr. Lopez, I see it here and I believe it to
be a true transcript, but I can't remember saying those
words, I don't know.

2 Q Now let's go into this situation about your
3 meeting with Di Napoli.

4 Familiarize us a little bit with workings of
5 agents attached to the Joint Task Force working on nar-
6 cotics.

7 Do each of the agents who are working try to
8 develop their own informants?

9 A Yes.

10 Q Is there any requirement in the Bureau of Nar-
11 cotics or with the New York City Police Department that
12 every time you make a meeting with someone that you inter-
13 to make an informant or to obtain information from that
14 you have a duty or an obligation to report this fact?

15 A Only if the man is a criminal.

16 Q Only if the man is a criminal, is that correct?

17 A Yes, sir.

18 Q Now, at the time and after February 3, 1972
19 was Di Napoli known to you as a criminal?

20 A He was not.

21 Q He had been arrested on February 3, 1972, is
22 that correct?

23 A By myself, yes, sir.

24 Q But you knew of no record of conviction as far
25 as he was concerned?

1
2 A There was none.

3 Q So that when you met Di Napoli you actually did
4 not feel an obligation under the rules as you knew them
5 to actually report these meetings to either your group
6 supervisor or the New York City Police Department?

7 A That is correct.

8 Q Isn't it a fact also that you questioned Di Napoli
9 with regard to Papa and narcotic activities?

10 A I did.

11 Q And isn't it a fact that to develop your ac-
12 quaintance with informants that you have to socialize
13 with them? I am talking about confidences.

14 A To be with them, to meet with them and speak
15 to them, yes. If that's socializing with them, yes.

16 Q Officer, in other words, the situation is a little
17 different when you have someone under a collar or under
18 arrest, isn't that correct?

19 A Oh, yes.

20 Q Where you have him, sort of speaking, under the
21 gun and you can talk to him straight, either cooperate or
22 get hurt, isn't that the way it goes?

23 A There is a big difference.

24 Q Whereas if you are trying to develop someone
25 that you have no collar on you have to have different

meetings and develop the relationship, is that correct?

A Well, you have to take an altogether different attitude towards the person.

A If you had gotten Di Napoli to cooperate with you in view of the happenings of February 3, 1972 this would have been a very important thing as far as you are concerned, didn't you figure it that way?

MR. PHILLIPS: Your Honor, at some point I have to object to the leading, and now it is becoming argumentative.

MR. LOPEZ: I hope I am not arguing with him.

THE COURT: I will permit it. Go ahead, answer the question.

A If I would have accomplished what I set out to do I would have still been a detective and probably gotten another one of those little bars.

Q In other words, had you converted Di Napoli you are telling us that you would probably have gotten another merit citation and still be a detective, is that correct?

A I would probably be the hero of the Police Department.

Q You went to Mr. Nadjari's office, isn't that correct?

A I did.

Q And they interviewed you?

A Mr. Joseph Austin Phillips spoke to me on several occasions.

Q And what was your relationship with Mr. Phillips? Can you just generally describe it for us?

A He is a filthy, foul-mouthed man.

Q And you were annoyed with him, is that correct?

A I was and I still am.

Q Did he at that time indicate to you that he was going to bring about a departmental trial as far as you are concerned?

A He did not.

THE COURT: He did not?

THE WITNESS: He did not.

Q Did he mention anything at all as far as any departmental trial or any charges against you?

A No, sir.

Q You had been asked questions as far as Stanton Garland is concerned, is that correct?

A Yes, sir.

Q This was never your informant, is that right?

A I never spoke to the man.

Q But brother officers or people in the Bureau of Narcotics did speak to you about Stanton Garland, isn't

1
2 that correct?

3 A Yes, sir.

4 Q Can you tell us if Stanton Garland was regarded
5 in the Bureau of Narcotics as a reliable informant?

6 A Most definitely not.

7 Q Was he regarded by your brother officers as a
8 person to be watched?

9 A A person to be watched?

10 Q In other words, could they rely on his informa-
11 tion? What was the opinion of Garland, that is what I am
12 getting at.

13 A Very low.

14 Q Why was that? Were any specific instances given?

15 A He was already an informant for the Bureau of
16 Narcotics and Dangerous Drugs which was located at 90
17 Church Street at the time my group arrested him. So he had
18 already charges pending against him and he was still out
19 dealing narcotics. I believe--

20 Q And this was known by the Bureau of Narcotics or
21 brother officers there?

22 A Oh, yes, sir. An agent from the Bureau of
23 Narcotics came to the New York Joint Task Force after he
24 was arrested. That was one of the first things that I
25 understood that he said, that he was an informant, that he

1 is an informant.

2
3 It is also my understanding that on two occasions
4 when he met with brother officers he was armed, he was re-
5 lieved of a revolver.

6 Q Isn't it correct, Officer Spurdis, as far as your
7 reference to radio transmission on the night of February
8 3, 1972, that there are logs and recordings of these
9 conversations between yourself and Pallatroni?

10 A There should be. It is a requirement of the
11 base operator to keep a logbook.

12 Q And who would have control and custody of those
13 logbooks?

14 A They should be at the office of the New York
15 Joint Task Force, 201 Varick Street.

16 Q In other words, this would be Agent Pallatroni's
17 old division or old bureau, is that correct, where he was
18 once located?

19 A Yes, sir, where he was a group supervisor.

20 Q In other words, these radio recordings are in
21 the control of the United States Government, is that what
22 you are telling me?

23 A Yes, sir. It is their property.

24 MR. LOPEZ: I have no further questions.
25

XXX

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Spurdis-recross

35

RECROSS EXAMINATION

BY MR. PHILLEPS:

Q Are you saying that the radio communications were recorded or it was the policy of the Bureau of Narcotics & Dangerous Drugs to record these communications as of February 3, 1972?

A To my knowledge, it was a requirement from June 1st, when I was first assigned there.

Q Isn't it a fact that that is a requirement that exists now but did not exist in February 1972?

A That is not true.

Q You are sure of that?

A Positive. I have been baseoperator many times.

Q You were shown the report, Government Exhibit 4 for identification. This is the report that you signed. Do you recall that?

A Yes, sir.

Q You want to see it again to make sure that is what I am referring to?

A If you want to ask me something specific, I would appreciate it.

Q You just testified on redirect examination that the inaccuracies in that report you brought to the attention of Pallatroni; is that correct?

1 A Yes, sir.

2 Q Did he force you to sign that document?

3 A Force? Physically?

4 Q In any way.

5 A He said, "Sign the document." I signed it.

6 Q And you knew that there were inaccuracies when
7 you signed the document?

8 A Yes, sir.

9 Q But you went ahead and signed it anyway?

10 A Yes, sir.

11 Q After you became aware that the complaint was
12 dismissed as against Mr. Di Napoli and Mr. Papa you con-
13 tinued and you saw Mr. Di Napoli on a number of occasions,
14 some of them socially, is that correct?

15 A At least once socially.

16 Q And it was your opinion at that time or your
17 belief that there was no pending investigation involving
18 Di Napoli or the money, is that correct?

19 A There was none to my knowledge, no, sir.

20 Q Did there ever arise an investigation as far as
21 you were aware involving Di Napoli or the money after the
22 complaint was dismissed?

23 A Later on in the year I was given federal
24 subpoenas in the names of -- one was Mr. Di Napoli, Mr. Papa.
25

1
2 There were several others that I went and served on these
3 various people.

4 Q And when you served those subpoenas you knew
5 that it involved the money that had been seized on
6 February 3rd, is that correct?

7 A That's correct.

8 Q At that time were you seeing Di Napoli on a
9 social basis?

10 A No, sir, I hadn't seen him.

11 Q You stopped seeing him?

12 A From -- I would -- from the best of my recollec
13 ion, early July.

14 Q You stopped seeing him?

15 A Yes, sir.

16 Q Are you sure about that?

17 A Yes, sir.

18 Q How about his wife?

19 A No, I have seen her on many occasions thereafter

20 Q Did you see his wife after you served the
21 federal subpoenas?

22 A Yes.

23 Q Did you see her alone?

24 A At times we spoke alone, yes.

25 Q Even after you served the federal subpoena on

her husband?

A Yes, sir.

Q Do you know when you served the subpoena on her husband?

A I believe it was some time in December.

Q December?

A 1972.

MR. PHILLIPS: May these be marked Government Exhibits 7 and 8 for identification?

(Government's Exhibits 7 and 8 were marked for identification.)

Q I show you Government Exhibits 7 and 8 for identification, Officer Spurdis. If you would look at the back of those documents -- first, can you identify those documents?

A These are either copies of or the exact federal subpoenas that I had in my possession.

Q The original of the subpoenas that you served on Papa and Di Napoli. And does your signature appear on the back of them?

A Yes, sir, this is my handwriting.

Q Does the date as to when you served the subpoena appear?

A September 20th of 1972.

2 Q As to whom?

3 A On Mr. Papa.

4 Q And as to Mr. Di Napoli?

5 A On September 18, 1972 for Mr. Di Napoli.

6 Q When were the subpoenas made returnable for?

7 A The 22nd day of September, 1972 at 10:00 a.m.

8 Q You personally served these subpoenas on these
9 individuals, is that correct?

10 A I did.

11 Q Was the time that you served the subpoena on
12 Mr. Di Napoli the first time you saw him since July?

13 A I would say yes, sir.

14 Q Had you seen his wife in the meantime, between
15 July and September?

16 A I believe that I had seen her a couple of times

17 Q Did you continue to see her after you served
18 the subpoena on Di Napoli?

19 A I am sure that I did see her a few more times
20 afterward, yes, sir.

21 Q Alone or with your wife?

22 A Both.

23 Q How many times did you see her afterwards?

24 A We are talking up to the present date?

25 Q Yes.

1
2 A I would have to say many times.

3 Q About 50?

4 A That might be a little high.

5 Q 40?

6 A I will concede 40 or 50. I am not sure.

7 MR. PHILLIPS: I have nothing further, your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MR. LOPEZ:

11 Q When you served the subpoena on Mr. Di Napoli
12 was Officer Reilly with you, if you recall?

13 A I don't believe so.

14 MR. LOPEZ: Thank you very much.

15 A (Continuing) I don't know. I don't believe so.

16 Q All right.

17 A I was by myself when I served the subpoena on
18 Mr. Papa though. That I am positive of.

19 MR. LOPEZ: Thank you very much.

20 THE COURT: All right. Step down.

21 (Witness excused.)

22 THE COURT: Next witness.

23 MR. LOPEZ: Your Honor, I would like to note
24 the presence here this afternoon of Miss Nancy Rosner, who
25 has joined in this application.

1
2 I would also like to note for the record that
3 I have been keeping her informed each day of what has been
4 transpiring here. I have also notified her as far as the
5 Court's decision not to permit co-counsel to pose any
6 questions, but she has been in communication and she has
7 been assisting me in the preparation of this hearing, your
8 Honor.

9
10 MRS. ROSNER: That's correct, your Honor. For
11 the record, we would join in co-counsel's application with
12 respect to the suppression of the evidence the government
13 intends to offer.

14 THE COURT: All right.

15 MR. LOPEZ: Your Honor, I have a witness here,
16 Mr. Charles Papa. I have not spoken with him. May I take
17 just one or two minutes to speak with him, your Honor?

18 THE COURT: Sure. Is he in the witness room?

19 MR. LOPEZ: He is right here, your Honor. He
20 just happened to come in during the examination of
21 Mr. Spurdis. It has nothing to do with that part of the
22 case.

23 THE COURT: All right. I will give you five
24 minutes.

25 MR. LOPEZ: Thank you very much, your Honor.

(Recess.)

Tk3

1
2 THE COURT: Mr. Lopez, are you read with
3 Mr. Papa?

4 MR. LOPEZ: Yes; I am.

5 THE COURT: All right.

6 MR. LOPEZ: May I call him?

7 I call Charles Papa to the stand, your Honor.

8 C H A R L E S P A P A, called as a witness by the
9 defense, being first duly sworn, testified as follows:

10 THE COURT: Now, Mr. Papa, this room is rela-
11 tively large. Please keep your voice up. No one is going
12 to be insulted if you yell.

13 DIRECT EXAMINATION

14 BY MR. LOPEZ:

15 Q Mr. Papa, what is your business?

16 A Automobile business.

17 Q Excuse me?

18 A Automobile business.

19 Q And what was your business on February 3, 1972?

20 A Automobile business.

21 Q And did your automobile business on February 3,
22 1972, or thereabouts have a name?

23 A I'm not the owner. I work there.

24 Q What is the name?

25 A Wides Motor Sales.

2 Q And what is the address of this firm?

3 A The office is at 1410 Beach Channel Drive, Far
4 Rockaway.

5 Q And what kind of business do you do? Do you lease
6 any cars there?

7 A No. Just sales.

8 Q Do you rent any cars there?

9 A No.

10 Q Now, are you related to Mr. Vincent Papa?

11 A He's my cousin.

12 Q Some time in 1972, before February 3rd, did
13 there come an occasion when either Mr. Papa or Mrs. Papa
14 came to your firm, came to your place?

15 A Yes. They came and bought a new car from me.

16 Q And what kind of a car was that?

17 A A 1972 Pontiac.

18 Q And what model?

19 A Granville.

20 Q And did there come a time when they brought the
21 car in for service or repairs?

22 A Yes.

23 Q And do you remember more or less when that was?

24 A Well, there was a few times when they brought it
25 in for service.

Q Well, do you recall if it was at the beginning of February 1972 that you were servicing this car?

A It was some time in February.

Q Now, when they brought this car in for service, did you in turn give them another car?

A Yes. I loaned them a courtesy car which we have.

Q And did that car have dealer's plates?

A Yes; it did.

Q And as a result of your lending the car to the Papas, did something happen to this car?

A Unfortunately, yes.

Q What happened?

A The Task Force called me on a Friday morning, I believe it was, that they had a car that belonged to us, and they confiscated the car; there was money in it, something to that effect, which I didn't know nothing about.

Q Now, as a result of that, did you go down and see anyone in the Task Force?

A Yes. I went down there and I redeemed the car. They gave it back to me.

Q Do you remember the agent whom you spoke to?

A Yes. Charles Rinaldi.

Q He was a federal agent; is that correct?

2 A Right.

3 Q But under no circumstances was the car that y
4 had given out and recovered from Agent Rinaldi leased or
5 rented in any way?

6 A No.

7 Q It was a courtesy car, because the car that y
8 had sold the Papas was being serviced; is that right?

9 A Yes.

10 MR. LOPEZ: Thank you very much, Mr. Papa.

11 Your witness.

12 XXX

12 CROSS-EXAMINATION

13 BY MR. PHILLIPS:

14 Q Is this company, Mr. Papas, called the Wides
15 Motor Sales Corporation?

16 A Yes.

17 Q Is it located in Queens?

18 A Yes.

19 Q And do you lease cars?

20 A No.

21 Q What do you do?

22 A Just sell. Sales and repairs.

23 Q Sales and repairs?

24 A Right.

25 Q And the particular car in question was a green

2 Pontiac?

3 A 1968 Le Mans Pontiac.

4 Q And do you own that car?

5 A We still have it, yes.

6 Q And at that time you were lending it, were you,
7 to Vincent Papa?

8 A Yes. We loaned it to him. It was a courtesy
9 car -- he left his for service -- so he could get home.

10 Q Which car did he leave?

11 A The '72 Granville which he had brought to us.

12 Q What kind of car is that?

13 A It's a Pontiac.

14 Q Did he own any other cars?

15 A Yes. I think they had a '67 Tempest at the
16 time, if I'm not mistaken.

17 Q Did he own any other car?

18 A No. Not that I know of.

19 Q Well, could he have owned some cars that you
20 didn't know about?

21 A Yes. We weren't that close. I didn't see him
22 that often.

23 MR. PHILLIPS: I have nothing further, your
24 Honor.

25 MR. LOPEZ: Just one more question.

XXX

mpd

C. Papa-redirect

366

REDIRECT EXAMINATION

By MR. LOPEZ:

Q Did you explain to Agent Rinaldi the circumstances under which you loaned the car to Papa?

A Yes.

MR. LOPEZ: Thank you very much.

No further questions.

(Witness excused.)

THE COURT: Next witness.

MR. LOPEZ: We have no further witnesses, your Honor.

MR. PHILLIPS: Your Honor, we have one stipulation and one witness in rebuttal.

THE COURT: One stipulation and one witness?

MR. PHILLIPS: Yes.

THE COURT: let's have the stipulation first.

MR. PHILLIPS: The stipulation is that if Inspector Joseph A. Comperiatì were called to testify here he would testify that he interviewed John Spurdìs on October 8, 1973 at 72 Poplar Street, Brooklyn, New York, in the presence of Captain George Peters and Mr. Spurdìs' attorney, Nancy Rosner.

Now I'm going to read just one portion of the statement that was taken from Mr. Spurdìs that the governm

offers, and that is as follows:

"Mr. Peter Pallatroni" -- and I am referring to page 5, which is a narration by Spurdis of the events of the evening of February 3, 1972.

"Mr. Peter Pallatroni had asked what my intentions were, and I relayed those intentions to my supervisor on the radio, that I thought that we would have probable cause in that Mr. Papa's reputation, being at this particular location under these circumstances, that I was willing to take a shot at him, that I felt that I had probable cause to stop the car and to search that suitcase."

I am going to continue on also, if I may, your Honor.

"Peter Pallatroni said, 'If that's your decision, do it.' He says, 'It's up to you.' He made no attempt to persuade me one way or the other. He didn't encourage me. He didn't tell me not to.

"I made it very clear to my partner, George Reilly, that if we are wrong, we are open to a lawsuit. I said, 'If we stop that car and there's nothing there,' I says, 'a person like Mr. Papa,' I says, 'supposed to be a very wealthy man, a narcotics dealer,' I says, 'was definitely going to make a suit against us, and we are going to be in serious trouble.' I said, 'Do you still

1
2 want to stop the car?'

3 "George Reilly said, 'I'll take your word for
4 it,' he said, 'if that's the way you feel, we'll stop the
5 car.'"

6 THE COURT: Do you agree to the stipulation?

7 MR. LOPEZ: Yes. If the witness were called,
8 he would stipulate to the accuracy of the transcript.

9 THE COURT: All right.

10 MR. PHILLIPS: Government now calls, your
11 Honor, Agent James Reed.

12 J A M E S R E E D, called as a witness in rebuttal by
13 the government; being first duly sworn, testified as
14 follows:

15 THE COURT: Now, Agent Reed, it is very
16 necessary -- this is a large room -- that your voice carry
17 Do you understand?

18 THE WITNESS: Yes, sir.

19 THE COURT: We are not going to be insulted or
20 think you are yelling at us. Just make sure you project
21 your voice.

22 All right. Go ahead, Mr. Fortuin.

23 DIRECT EXAMINATION

24 BY MR. FORTUIN:

25 Q Agent Reed, how are you employed?

1 A I am a special agent with the Department of
2 Justice, Bureau of Drug Administration.

3 Q And how long have you been so employed?

4 A Two years and nine months.

5 Q And during that period of two years and nine
6 months, generally what have your duties been?

7 A Generally to enforce the narcotics laws.

8 Q And to make investigations?

9 A Yes.

10 Q Were you on duty on the evening of February 3,
11 1972?

12 A Yes.

13 Q Okay. Did there come a time when you proceeded
14 to 1908 Bronxdale Avenue?

15 A Yes.

16 Q How did that happen? Why did you go there?

17 A My group supervisor, Peter Pallatroni, and I
18 were conducting an investigation in the Bronx when we were
19 called to 1908 Bronxdale Avenue by Detective John Spurdis
20 and Patrolman George Reilly. They had seen two gentlemen
21 enter --

22 Q You received a radio call from them?

23 A Yes.

24 Q And what did they tell you?

2 A They had seen two narcotics violators enter
3 1908 Bronxdale Avenue, carrying a large suitcase.

4 Q Did they tell you anything else?

5 A Yes, sir. They gave an impression as to who
6 these two people were or as to who one of the people were

7 Q What did they say?

8 A They said something to the effect of, "It's
9 either VP" or "VIP" or "very important people" or "VP."

10 Q Now, you were in a car with Agent Pallatroni
11 at the time?

12 A Yes.

13 Q Who was driving?

14 A Agent Pallatroni.

15 Q And after receiving that message, what did you
16 do?

17 A We proceeded to the vicinity of 1908 Bronxdale
18 Avenue.

19 Q And what happened when you got there?

20 A At that time, we situated ourselves a few
21 blocks or a few hundred feet from 1908 Bronxdale Avenue, on
22 a side street, and were waiting for something to develop.

23 Q Well, did you speak to anyone when you got there?

24 A Yes, sir. I believe so. Detective Spurdis
25 approached our car and spoke to us.

1
2 Q What did he tell you about the events of that
3 evening?

4 A In general, he identified one of the people as
5 being Vincent. Papa and then we discussed generally exactly
6 what was taking place, what we thought the suitcase might
7 have contained and things like that.

8 (Continued on page 371.)
9
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Q Okay.

And thereafter did Mr. Spurdis return to this vehicle?

A To the best of my knowledge, yes, sir.

Q And what happened to the car that you were sitting in?

A We awaited developments. In other words, we were waiting for something to happen.

Q Okay.

What did you hear over the radio while you were sitting there?

A Basically just communications as to what was going on around 1908 Bronxdale Avenue.

Q Well, according to the radio messages, what was going on around 1908 Bronxdale Avenue?

A Well, on one occasion, I believe two or three ladies exited 1908 Bronxdale Avenue. They placed trash in a can outside of the apartment, went back in and later they left the apartment in a vehicle.

Q Okay.

What happened after that?

A A little later, a gentleman exited 1908 Bronxdale Avenue, Mr. Pallatroni and myself were advised by Patrolman Reilly and Detective Spurdis that a gentleman had exited

the building and entered a car with New York registration 176MR, I believe.

Q What did you and Agent Pallatroni do then?

A When he departed the area we followed him for approximately 15 minutes.

Q Can you describe to us the route that that vehicle took?

A To the best of my knowledge, that vehicle departed 1908 Bronxdale Avenue and proceeded to the Bronx River Parkway southbound. From there it proceeded to the interchange at the Cross Bronx Expressway and appeared to be making a circular drive back to the Bronx River Parkway north.

In other words, it was our impression that he had gone south and then was coming back north in a circular pattern.

Q And what conclusion, if any, did you draw from the route he was taking?

A Well, I felt that perhaps the person who was driving the vehicle was either looking for a surveillance team to be following him or was perhaps trying to lead a surveillance team away from the area.

Q Okay.

What happened after you discontinued your

surveillance of that vehicle?

A Well, Agent Pallatroni drove back to the vicinity of 1908 Bronxdale Avenue and we resumed our former positions or fairly close to the positions we were in prior to leaving.

Q Okay.

What happened after that?

A Again, I can't remember exactly the traffic in and out of the apartment but on one occasion I believe the three females or these three other females returned to 1908 Bronxdale Avenue and reentered the apartment.

Approximately somewhere around 9:30 p.m. Agent Pallatroni and myself were advised that the two gentlemen who had entered 1908 Bronxdale Avenue carrying the suitcase had exited 1908 Bronxdale Avenue and were entering their vehicle, which was a green Pontiac bearing New York dealer plates.

Q Okay.

And what did you do after that?

A We waited for the gentlemen to enter their vehicle and when they left, Agent Pallatroni and myself began surveillance of the vehicle along with Patrolman Reilly and Detective Spurdis.

Q Who was driving the car that contained Spurdis

and Reilly?

A Detective Spurdis.

Q Did there come a time when that vehicle was pulled to the side of the road?

A Yes, sir.

Q And who gave the order to pull the vehicle over?

A Special Agent Peter Pallatroni.

Q And who was driving the vehicle that pulled it over again?

A May I explain?

Q Yes.

A We were following the vehicle and we approached the intersection of I believe Castle Hill Avenue and East Tremont Avenue. There's an intersection-- a light at that intersection and Special Agent Pallatroni advised Detective Spurdis' car to have the vehicle pull over at that intersection. At that time Detective Spurdis' vehicle pulled alongside Mr. Papa's car or the car that Mr. Papa was driving, and they pulled it over.

Detective Spurdis' car pulled in front of the defendant's car and we pulled in behind it as it pulled over to the car.

Q If you know, who signalled to the Papa car to pull over?

1
2 A I have no idea.

3 Q All right.

4 Now, during the course of the evening you were
5 present, you heard all the conversation that came over the
6 radio from the other vehicle, is that correct?

7 A Yes, sir, I did.

8 Q And you were present when Agent Pallatroni spoke
9 with Mr. Spurdis, is that right?

10 A Yes, sir.

11 Q At any time do you remember an argument between
12 the two of any kind?

13 A No, sir.

14 Q And do you ever remember an occasion on which
15 Detective Spurdis said to Agent Pallatroni, "Fuck you, we
16 are going to pull the car over"?

17 A No, sir.

18 Q There was no occasion in your hearing to that
19 effect on that evening?

20 A No, sir.

21 Q Just so that it is clear: When the vehicle
22 containing Spurdis and Reilly pulled over the Papa vehicle,
23 who was driving that car, the vehicle containing Spurdis
24 and Reilly?

25 A Detective Spurdis.

Q And where was Detective Reilly or Officer Reilly?

A Officer Reilly was sitting in the passenger side, the front seat.

Q Just so that I understand: They pulled over on the left side of the Papa vehicle, is that correct?

A Yes, sir.

Q So that the Papa vehicle was on the right-hand side of the Spurdis and Reilly vehicle?

A Yes, sir.

Q And Reilly was sitting in the passenger seat and Spurdis was driving?

A Yes.

MR. FORTUIN: I have no further questions.

THE COURT: All right, Mr. Lopez.

CROSS-EXAMINATION

BY MR. LOPEZ:

Q Now, Agent Reed, are you still an agent working under Group Supervisor Pallatroni?

A No, sir.

Q You have been transferred as far as that is concerned?

A I have been transferred from the New York Joint Task Force where I was working when the seizure of the

1
2 money-- at the time of the seizure of the money.

3 Q You are a federal agent?

4 A Yes, sir.

5 Q And you were working with Agent Pallatroni?

6 A Yes, sir.

7 Q And he was your group supervisor?

8 A Yes, sir.

9 Q Now, did you make any notes or any memorandum
10 or any type of communications that you reduced to writing
11 in connection with your testimony here today or in rela-
12 tion to the events of February 3rd, 1972?

13 A Yes, sir.

14 Q And what reports, communications, et cetera did
15 you prepare?

16 A Well, the first chance I had in my office hours
17 I prepared daily reports as to my activities.

18 Q I see. And what do you call those reports?

19 A At that time, they were called BNDD 17s.

20 Q About how many of those BNDD17s did you prepare?

21 A Only one. It is an account of our daily ac-
22 tivities from what time we were in the office until the
23 time we left and things like that.

24 Q And did you use that BNDD17 to refresh your
25 recollection as far as your testimony here today is concerned?

1
2 A No, sir.

3 Q You didn't look at it?

4 A Prior to-- I have looked at it, yes, sir.

5 Q And you used that report also to refresh your
6 recollection as to-- so as to give us the benefit of your
7 testimony here today, isn't that correct?

8 A Yes, sir, and I also reviewed the investigative
9 report also that was written by Detective John Spurdis.

10 MR. LOPEZ: Your Honor, may I have all these
11 reports that he has refreshed his recollection on before
12 giving his testimony here today? I think one is admitted
13 in evidence.

14 THE COURT: One is admitted in evidence.

15 The BNDD17, Mr. Lopez, unless I am wrong, is an
16 account of time.

17 BY MR. LOPEZ:

18 Q It doesn't contain any specific facts or anything
19 like that?

20 A It is an administrative report.

21 THE COURT: It is to make sure that nobody takes
22 an extra long lunch hour.

23 THE WITNESS: Sir --

24 MR. LOPEZ: Yes, sir.

25 THE WITNESS: Would you repeat your question in

full which led up to this?

Q What I am anxious to know is if in relationship to your testimony here today or your testimony in connection with whatever happened on February 3rd, 1972, you ever prepared any reports or communications for other people or for yourself which you are relying on today to give us the benefit of your testimony, have you prepared any such reports or communications?

A Yes, sir. There is also one more, I believe.

Q Which one is that?

A I supplied an affidavit to my agency as to my participation on the night of February 3rd and the morning of February 4th, 1972.

Q Whom did you supply this affidavit to?

A Special Agent James Borden and Special Agent William Wolfe.

Q Do you see Special Agent Borden in the courtroom here today?

A Yes, sir.

Q And does he have that affidavit?

Did you give it to him?

A Yes, sir, I gave it to him.

MR. LOPEZ: Your Honor, may we call upon the government to deliver that affidavit. Mr. Borden is here

1
2 in the courtroom today.

3 MR. PHILLIPS: Mr. Lopez (handing).

4 Your Honor, for the record, there is a document
5 in my hand of a statement furnished by James Reed to Mr.
6 Borden on October 31, 1973. I have discussed this with
7 Mr. Lopez and indicated to him that only the first page
8 and a half relate to the events leading up to and including
9 the arrest.

10 The remaining document refers to what happened
11 after that and he is agreeable to my representation as to
12 such and will accept just the first page and a half.

13 THE COURT: Is that agreeable with you, Mr. Lopez?

14 MR. LOPEZ: Yes, that's agreeable to me.

15 THE COURT: Do you want me to read the rest of
16 it?

17 MR. LOPEZ: Your Honor, I am getting a little ob -
18 jection from defense counsel table. May I read the whole
19 thing just to make everybody happy?

20 THE COURT: No. I will read the whole thing
21 and see where we go from there.

22 How long is it?

23 MR. PHILLIPS: Three or four pages.

24 THE COURT: All right.

25 MR. LOPEZ: Does Mr. Phillips have any objection

1
2 if I read the whole thing?

3 MR. PHILLIPS: Yes.

4 THE COURT: That apparently is the reason --

5 MR. LOPEZ: Now I am even more interested in
6 reading it.

7 THE COURT: That may be. I will take it inside
8 and read it myself.

9 (Recess.)
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(In the robing room; Mr. Phillips, Mr. Fortuin
and Mr. Lopez present.)

THE COURT: I have read through the exhibit,
what will be marked as an exhibit.

I just want to know at what point, Mr. Phillips,
you intend to cut it off?

MR. PHILLIPS: I will show it to your Honor.

At the end of the first full paragraph on page 2.

THE COURT: All right.

I assume you want the ruling in open court, Mr.
Lopez?

MR. LOPEZ: Yes.

(In open court.)

THE COURT: The record should reflect I have
taken the first page of the unmarked exhibit down to the
end of the first full paragraph on page 2, made that Ex-
hibit No. 9 and I have taken the rest of the document and
I am going to mark that as Exhibit 9A and have that sealed
by the clerk.

(Government Exhibit 9 and 9A marked for identi-
fication.)

BY MR. LOPEZ:

Q Officer Reed or Agent Reed, you have told us now
that in connection with your testimony here today and in

1
2 the past in referring to the facts of February 3, 1972,
3 you submitted an affidavit to Agent Borden, isn't that
4 correct?

5 A Yes.

6 Q Agent Borden is connected with Internal Affairs.
7 isn't that correct?

8 A Yes, sir. That is not the title.

9 Q What is the title?

10 A I believe it is The Office of Inspection.

11 Q The Office of Inspection, which is equivalent
12 to Internal Affairs in the City of New York? Would
13 that be right, do you know?

14 A It is similar, yes, sir.

15 Q On February 3, 1972, Agent, how long had you
16 been a federal special agent?

17 A Since June of 1971.

18 Q So that you were recently incorporated into the
19 service, isn't that correct, the Bureau of Narcotics?

20 A Yes, sir. I began my training on April 5, 1971.

21 Q And you were working on the evening in question,
22 February 3, 1972, in conjunction with your group super-
23 visor, Agent Pallatroni?

24 A Yes, sir.

25 Q And your relationships with him were good?

1
2 A Yes, sir.

3 Q How about your relationships with Detective
4 Spurdis at the time?

5 A Very good.

6 Q And how about with Agent Reilly?

7 A Police Officer Reilly? Very good.

8 Q Police Officer Reilly. I'm sorry.

9 A Very good.

10 Q I am going to show you Government Exhibit 4,
11 which is the report of investigation, and ask you if you
12 have seen that before.

13 A Yes, sir, I have.

14 Q And have you had an opportunity to discuss it
15 with anyone?

16 A Yes, sir, I have.

17 Q With whom have you discussed it?

18 A The members of my group.

19 Q Did you discuss it with Agent Pallatroni?

20 A Right after it was written probably, yes, sir.

21 Q Who wrote this, if you know?

22 A Detective Spurdis, I believe.

23 Q He wrote it himself?

24 A Yes, sir.

25 Q You saw him write it and prepare it?

1
2 A Yes, sir.

3 I was present probably part of the time.

4 Q What participation did Agent Pallatroni have in
5 the preparation of this report?

6 A I don't know.

7 Q Did you agree with the facts as stated in this
8 report?

9 A Yes, sir.

10 Q Did you find the facts as reported in the report
11 of investigation substantially correct?

12 A Yes, sir.

13 Q As far as you knew them?

14 A Yes, sir.

15 Q I refer you to Paragraph 5. Please read it to
16 yourself.

17 A Yes, sir.

18 Q So that when you were stationed there on Febru-
19 ary 3, 1972 the report that you received to your vehicle
20 was that Vincent Papa had just been observed in the vicinity
21 of 1908 Bronxdale Avenue, isn't that correct?

22 A Yes, sir.

23 Q And shortly before 9:30 9:30 p.m. it was
24 Vincent Papa who was seen carrying out a suitcase with
25 both hands, isn't that correct?

1
2 A Yes, sir.

3 Q That was the information that Agent Pallatroni
4 had, isn't that right? If you had the information then
5 Agent Pallatroni had the same information, didn't he?

6 A That's the way I remembered it, sir.

7 Q That is the way you remember it?

8 A Yes, sir.
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Q The reason that you remember it is it is based on the various reports and on your recollection; is that correct?

A Yes.

Q Let's start from the beginning. On February 1972 at what time did you begin your duties?

A This is approximate, but it was probably around 3:30 or 4:00 p.m.

Q As you went out that day you went out with Special Agent Pallatroni?

A Yes, sir.

Q You had received no special information in connection with a narcotic transaction that day?

A We had an assignment when we went out.

Q I know that. You had an assignment to look for George Rossi and to execute a warrant against him or a warrant against several people, isn't that correct?

A Yes, sir.

Q That was the principal assignment, but what I am asking you, Agent, is on February 3, 1972, as you went out on this assignment, you did not know beforehand that there was going to be an undercover sale or there was going to be a narcotic transaction of any kind on February 3, 1972, isn't that correct?

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1 A That's correct.

2 Q you were looking for individuals to arrest them?

3 A Yes, sir.

4 Q For things that had happened?

5 A Yes, sir.

6 Q Not for things that were going to happen, isn't
7 that correct?

8 A That's correct.

9 Q And during the course of your search you were
10 located a certain area away from 1908 Bronxdale Avenue around
11 8:00 p.m. that night, isn't that right?

12 A Yes, sir, that was.

13 Q It was pouring rain that night?

14 A Yes, sir.

15 Q And outside of the street lamps and the light
16 coming from buildings, it was pretty dark, right?

17 A Yes, sir.

18 Q I am right in saying it was a miserable day?

19 A It sure was.

20 Q You had a raincoat on?

21 A No, sir, I probably didn't.

22 Q But it was pouring, isn't that correct?

23 A Yes, sir.

24 Q You would say visibility was poor at that time,
25

1
2 isn't that correct?

3 A Yes.

4 Q And you were in an automobile with Pallatron
5 isn't that correct?

6 A Yes, sir.

7 Q You suddenly received during the course of the
8 evening, around 8:00 o'clock, a radio call?

9 A I believe it was around 8:00 o'clock, yes, sir.

10 Q You are giving us your best time. This radio
11 call, as it speaks into the automobile, does it speak to
12 one specific person or does it speak to all the individuals
13 in the car, so that everyone can hear?

14 A All the individuals in the car.

15 Q These are special channels that you have, isn't
16 that right?

17 A Yes, sir.

18 Q And you are familiar with those channels,
19 aren't you?

20 A Yes, sir.

21 Q As a matter of fact, not only the cars in
22 question who are communicating and relaying to each other
23 but if you have certain operators that have special types
24 of radios, they can communicate with some of the channels
25 isn't that correct?

1
2 A Yes, sir. We have local channels in which if
3 you are in a given vicinity you can go to that channel and
4 not bother the major channel.

5 Q Right.

6 A That's a local channel.

7 Q And you have some channels that are private,
8 isn't that correct, where people can't go on those channels,
9 is that correct, or are all channels that you have people
10 are operating, special operators, they can communicate and
11 listen in?

12 A We have, as I was saying, local channels. Some-
13 one probably ten miles away wouldn't be able to monitor our
14 transmissions because of the distance.

15 Q But someone in the area could possibly monitor
16 it?

17 A Yes.

18 Q Isn't that correct?

19 A Yes.

20 Q When you receive a radio communication you can
21 hear it right in the car, can't you?

22 A Yes, sir.

23 Q So what Pallatrone was hearing you were hearing,
24 isn't that correct?

25 A Yes, sir.

1
2 Q Sometime around 8:00 o'clock that night you were
3 at the driver's seat?

4 A No, sir, I was in the passenger's seat.

5 Q You were the passenger and Agent Pallatroni was
6 driving, is that correct?

7 A Yes, sir.

8 Q Was this the same throughout the evening until
9 the actual arrest and stopping of the vehicle?

10 A Yes, sir.

11 Q Now you heard a message. Who's voice did you
12 hear, if you recall?

13 A I am not for sure, but the first message I heard
14 I believe was from Patrolman Reilly.

15 Q And what was the first message that you received,
16 if you remember? If you don't remember tell me, "Look, I
17 don't remember."

18 A That he and Detective Spurdis had observed two
19 men entering 1908 Bronxdale Avenue carrying a large suitcase.

20 (Continued on next page.)
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Q Now, these calls that come over the radio --
THE COURT: He didn't finish his answer.

A And he further stated that he identified one of
the individuals, either by his initials or by meaning that
he was a very important person or a major -- what we call
a major violator.

Q In other words, the initials were used; isn't
that right?

A I believe so.

Q And do you recall the initials VIP or VP were
used?

A VIP or VP were used.

Q And this to you meant very important person or--

A Vincent Papa.

Q Vincent Papa?

A I didn't know that at the time.

Q You didn't know that at the time?

A That's right.

Q Now, these radio messages and radio calls: they
are also logged, aren't they, at Varick Street or at
federal headquarters, messages relayed between car and car,
if you know?

A No, sir, normally, no.

Q I don't mean normally. Are records kept of com-

1
2 munications between one radio and another radio?

3 A No, sir.

4 Q At Varick Street?

5 A No, sir.

6 Q Of your own knowledge?

7 A No.

8 Q You don't know anything of that?

9 A No, sir.

10 Q Can you communicate with Varick Street with any
11 of the radios?

12 A Yes, sir.

13 Q I am talking of the time, February 3, 1972.

14 A Yes, sir.

15 Q Now, Agent, you mentioned in your direct testi-
16 mony that two known narcotic violators were seen going into
17 1908 Bronxdale Avenue on February 3, 1972; isn't that correct?

18 A Yes, sir.

19 Q And, as a matter of fact, I show you Government
20 Exhibit 9. You also indicated that two known narcotic
21 violators had come out of a 1968 Pontiac; isn't that correct?

22 MR. FORTUIN: Excuse me. The document isn't in
23 evidence.

24 Q (Continuing) Well, read it. Refresh your recol-
25 lection.

MR. LOPEZ: I will withdraw that question.

Thank you.

Q Refresh your recollection with Government Exhibit 9.

A Yes.

Q Is it your testimony that the communications you received were that two known narcotics violators had left a 1968 Pontiac and went into 1908 Bronxdale?

A Yes.

Q Isn't it a fact that at the time the communication was received, only one person was identified?

A I -- I don't know.

Q Well, you told Mr. Phillips that two known narcotics violators were seen going into 1908 Bronxdale.

A Yes.

Q One of them you have established as Vincent Papa. Now, where did you receive the information that the second person was also known, on February 3, 1972, as he entered 1908 Bronxdale Avenue, at around 8:00 o'clock, if you recall?

A I don't remember.

Q Right. Actually, that second person was not identified in this first radio communication, was he?

A His name wasn't given to me, no, sir.

Q As a matter of fact, an unidentified person was

mentioned in the company of Vincent Papa, isn't that more correct, in the message that you received?

A I don't remember.

Q All right. Now, as a result of that, did Agent Pallatroni and you go down to 1908 Bronxdale Avenue?

A Yes, sir.

Q And as you went down there and arrived at the scene, did you speak with Detective Spurdis?

A Yes, sir, after we parked our car.

Q And were you in the car when Detective Spurdis came over?

A Yes, sir.

Q And was there a discussion between Pallatroni and Spurdis?

A Yes, sir.

Q Did it involve you or were you just listening?

A Listening.

Q Now, did Spurdis say that he had seen Vincent Papa?

A To the best of my knowledge, yes, sir.

Q Well, he didn't say if he was able to identify the other person there, did he?

A I don't remember.

Q You don't remember. Okay. Then Spurdis went

1
2 to the 1908 Bronxdale Avenue house, isn't that correct, to
3 look through the windows? Do you remember that? Do you
4 remember Pallatroni advising Detective Spurdis to go over
5 to 1908 Bronxdale Avenue and look into the windows to see
6 if he could find out what was going on?

7 A I don't remember that, either.

8 Q You don't remember that either. But in any
9 case, Spurdis left the scene, isn't that correct?

10 A Yes, sir.

11 Q Did you see where he went?

12 A No, sir.

13 Q You just lost sight of him, and at that time
14 your vehicle was faced in such a way that you couldn't see
15 the entrance at 1908 Bronxdale, could you?

16 A I believe we could see the entrance. There was
17 a light above the door, either blue or reddish light. If
18 I remember correctly, I could see the door, but I was
19 several hundred -- a hundred yards away.

20 Q You were a hundred yards away?

21 A I was a good distance away.

22 Q A good distance away?

23 A Yes.

24 Q And this was a rainy night?

25 A Yes.

2 Q Pouring rain?

3 A Yes.

4 Q And you saw a figure coming out of the house?

5 A No, sir.

6 Q Some time later, shortly before 9:30?

7 A No, sir.

8 Q You didn't see anybody?

9 A No.

10 Q Did you know if Agent Pallatroni commented to
11 you if he saw anyone coming out of the house shortly before
12 9:30?

13 A I don't remember.

14 Q Well, did you receive a communication from
15 Spurdis indicating that a man has just left the house with
16 a suitcase, which you followed and you took? Do you remember
17 following a car to the Bronx River Parkway?

18 A Yes, sir; I do.

19 Q Do you know where that man came out of that you
20 followed?

21 A We were advised --

22 Q That's what I'm getting at. You didn't actually
23 see the man leave the house?

24 A No, sir.

25 Q Because, as a matter of fact, you were too far

away; isn't that right?

A Yes.

Q -- to actually see it and make the identification?

A Yes.

Q But you commenced the pursuit or the following of this automobile as a result of another radio message; isn't that correct?

A Yes, sir.

Q And whom did this radio message come from?

A Detective Spurdis' car.

Q Right. And what did that message say, if you recall?

A I don't recall exactly what it said.

Q But it did advise you that a male had gone into an automobile, and gave you a registration; isn't that correct?

A Yes, sir.

Q And you decided to follow?

A Yes, sir.

Q It was Pallatroni's idea to follow this car?

A Yes, sir.

Q And you in fact did follow it?

A Yes, sir.

Q And this you interpreted as some maneuver to get

2 you off the surveillance at 1908 Bronxdale?

3 A Yes, sir.

4 Q You couldn't imagine perhaps this was somebody
5 just happening to leave the house at the time? You didn't
6 give that thought, did you, that someone had been visiting
7 in the house and happened to be leaving at that time?

8 MR. FORTUIN: I object to it. It is argumentat
9 and it calls for --

10 THE COURT: I will take it.

11 Q Had you given that thought before you came to
12 that conclusion?

13 A Yes, sir.

14 Q But you discarded that conclusion, that it just
15 could be somebody just happening to leave the house?

16 A Yes, sir.

17 Q And this was at the insistence of Pallatroni
18 discussing it with you? You discussed it with him, didn't
19 you?

20 A Yes, sir. We shared each other's views.

21 Q And he said, "No. This is a big maneuver to
22 get us off the surveillance," isn't that correct?

23 A No, sir. He didn't say that.

24 Q When did he say that, if he said it at all?

25 THE COURT: He just said he didn't say it.

Q Did he ever say it to you?

A Perhaps later, but I'm not sure. After everything had taken place.

Q But this was your interpretation of this message that you had received; is that correct?

A Yes, sir.

MR. PHILLIPS: Objection, your Honor. This is misleading. It's his interpretation of what he observed, not the message he received.

Q This is your interpretation of what you observed; isn't that correct?

THE COURT: All right. Let's go on.

Q Now, did you later learn that this car and that the driver was one Murray Richman?

A No, sir.

Q You never learned that that was an attorney who had left the house?

A I learned who the car was registered to. I don't know who was driving it.

Q When did you learn who the car was registered to?

A Again, I don't remember exactly when, but it was some time later, after we had discontinued the surveillance of that vehicle.

Q Was it the same evening?

1
2 A I believe so; yes.

3 Q Was it before the halting of the Papa-Di Napoli
4 vehicle by Spurdis?

5 A I believe so.

6 Q How about the Papa-Di Napoli vehicle? Did you
7 ever check that vehicle out to find out the registration
8 and who the car was registered to?

9 A I didn't.

10 Q Do you know if anyone did in your presence?

11 A I don't remember.

12 Q Okay. Now, you returned to the scene. Isn't
13 that correct, on February 3, 1972?

14 A Yes, sir. We returned back to the vicinity of
15 1908 Bronxdale.

16 Q And what was the next message that you received?
17 Now, this is about 9:25 when you followed Murray Richman.
18 Now, about 9:25 or 9:30, did you receive a message or did
19 you see someone?

20 A No, sir. I received a message.

21 (Continued on page 402.)
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Q Who gave you the message?

A I don't remember.

Q Was it Spurdis?

A I don't remember.

Q And what was that message?

A To the best of my recollection--

Q That's all I want.

A -- the two men had departed 1908 or had exited
1908 Bronxdale Avenue.

Q Yes?

A -- carrying a large suitcase, and had entered
a green Pontiac, 1968 Pontiac.

Q Was that about the entire message that you had
received?

A Yes, sir.

Q Were you told at that time that Vincent Papa was
carrying the valise?

A I don't remember that.

Q You don't remember. You don't recall that, do
you?

A Not right now; no, sir.

Q Do you recall if you were told that one of the
men was carrying the valise on his shoulder?

A No, sir.

1
2 Q Were you told that two of the men were actually
3 carrying the valise?

4 A No, sir.

5 Q Were you ever told that one of the men was
6 carrying the valise with two hands?

7 A I believe so; yes, sir.

8 Q Were you told at that time when you received the
9 telephone message?

10 A Yes, sir, I believe so.

11 Q Now, exactly what was the message that you re-
12 ceived?

13 A That two men had exited 1908 Bronxdale Avenue,
14 that one of them was carrying a large suitcase with both
15 hands and they --

16 Q Were you told it was Vincent Papa who was carry-
17 ing the suitcase?

18 A I don't remember.

19 Q Were you told that it was the same man who broug
20 it into the house?

21 A No, sir.

22 Q You have no recollection?

23 A No, sir.

24 Q You didn't see any of this?

25 A No, I didn't.

Q The man who was making the observation here was Detective Spurdis and George Reilly?

A And George Reilly.

Q If you know, who was in charge of that car? Was it Spurdis or was it Reilly, if you know?

A No, I --

Q Is Spurdis a detective?

THE COURT: He said he didn't know.

Q Spurdis was a detective?

A Yes.

Q And Reilly was a police officer?

A Yes.

Q Spurdis had been longer with the Federal Drug Administration?

A I don't know.

Q Now, you had not seen at this time Spurdis or Reilly for some time, isn't that correct?

A That's correct.

Q Did Agent Pallatrone then start moving his vehicle?

A He started after Mr. Papa's vehicle started.

Q Did you see the Papa vehicle?

A After we started following it, yes, sir.

Q Where did you pick it up?

1
2 A I would say first approximately a block from the
3 house.

4 Q And it was raining hard at that time?

5 A Yes, sir.

6 Q You were keeping an eye on the Papa vehicle?

7 A Yes, sir.

8 Q You didn't know where the Spurdis vehicle was
9 at this time as you were following the Papa vehicle? You
10 couldn't see it, could you?

11 A Yes. At times it was in front of us and at
12 times I assume it was behind us.

13 Q And was there ever a time when it was between
14 you and the front car?

15 A Yes, sir.

16 Q And it was pouring rain?

17 A Yes, sir.

18 Q How many feet in front of you was it?

19 A I have no idea. I know --

20 Q Go ahead.

21 A -- I know that night we maintained a closer sur-
22 veillance than normal because of the downpour.

23 Q And because of the visibility?

24 A Yes, sir.

25 Q And you could see the back sometimes of that

Spurdis vehicle?

A Yes, sir.

Q And you are telling me that from your passenger seat with your lights on in the pouring rain, you could see where each of the parties were seated?

A No, sir.

Q Okay.

So there came a time when the Spurdis vehicle communicated with you again regarding halting that car, is that correct? Halting the Papa car?

A Yes, sir.

My group supervisor instructed Detective Spurdis and Police Officer Reilly to stop the car.

Q Well, when was this message given?

A Upon the approach at the intersection of Castle Hill Avenue and East Tremont Avenues.

Q Well, did you ever tell your group supervisor, "Let's stop the car"? Did you ever give an opinion?

A I'm sure I gave opinions.

Q Do you recall?

A No, sir.

Q In other words, you are telling us that it was Agent Pallatroni's decision to stop the vehicle?

A That's correct.

mp:mg 6

Reed-cross

Q Did you see the vehicle being stopped?

A Yes, sir.

Q And exactly what happened at that time?

A Detective Spurdis' vehicle had been following. It was right behind the green Pontiac. At the instruction of Agent Pallatroni, Detective Spurdis's vehicle pulled alongside the green Pontiac and then passed it and it pulled over and they pulled in front of it, Detective Spurdis' vehicle, and we pulled in behind.

Q And at that time Vincent Papa came out of the car, is that correct?

A I don't remember that.

Q Do you know if Spurdis and Reilly came out with their guns drawn?

A No, sir. I know they came out of the car.

Q Right.

But you don't know if they had their guns drawn?

A No, sir.

Q Did you have your gun drawn?

A No, sir, I didn't.

Q Did you take any police action in the sense of putting handcuffs on anyone?

A Yes, sir.

Q And whom did you put handcuffs on?

1
2 A On Mr. Di Napoli.

3 Q Right.

4 And do you know who put handcuffs and secured
5 Papa?

6 A No, sir.

7 Q Now, this was all done before the suitcase was
8 pulled out of the car, is that correct? In other words,
9 the two prisoners were secured before the search of the
10 vehicle commenced?

11 A Mr. Di Napoli was secured.

12 Q Well, wasn't Papa secured, if you know?

13 A I don't know.

14 Q But you know that Di Napoli was secured?

15 A Yes, sir.

16 Q And then the search of the vehicle began, isn't
17 that right?

18 A I think so.

19 Q Spurdis went to the car?

20 A I don't know.

21 Q Well, who pulled the bag out of the car, the
22 valise?

23 A I don't know.

24 Q You don't know that, is that correct? But at the
25 time that you secured Di Napoli or arrested him -- did you

1
2 arrest him?

3 A No, sir, I didn't.

4 Q Well, was anyone in your presence arrested?

5 A Yes, sir.

6 Q Who did?

7 A I'm not sure which.

8 Q Were any words exchanged at that time?

9 A Just normal police conversation, I guess.

10 Q What was that?

11 "You are under arrest"?

12 A "You are under arrest. Put your hands on the
13 wall" -- things like that. They were searched for fire-
14 arms.

15 Q What were they arresting Di Napoli for at that
16 time?

17 A I don't know.

18 Q What did they arrest Vincent Papa for at that
19 time?

20 A For violation of the Federal Narcotic Laws.

21 Q Had you found any narcotics?

22 A Also -- excuse me, sir?

23 Q Yes --

24 A Mr. Di Napoli was also arrested for violation
25 of the Federal Narcotic Laws.

Q And this was before you found the valise?

A I don't remember that.

Q Well, he was being handcuffed?

A Yes.

Q You told us that was just before the valise was found?

A Yes.

Q And am I correct in assuming that if you handcuff a person and put a gun on him, he is under arrest?

MR. PHILLIPS: Objection. Asking for a legal conclusion.

Q He was under arrest? Was he detained?

MR. PHILLIPS: Objection.

THE COURT: Let me see if I can make some sense out of this?

Agent Reed, there came a time when somebody told you to secure Di Napoli, right?

THE WITNESS: Yes, sir.

THE COURT: Now, which way were you facing when you put the handcuffs on Di Napoli; toward the wall or toward the street?

A Toward the wall.

THE COURT: How long did it take you to get the cuffs on Di Napoli?

1
2 THE WITNESS: Approximately three or four min-
3 utes. A lot longer than normal.

4 THE COURT: Three or four minutes?

5 THE WITNESS: Yes, sir. One of my cuffs had
6 become double-locked. In other words, there's a button
7 that you can push that secures the lock from going around
8 the wrist too tight, and it had become double-locked and I
9 had to unlock that one to put it on Mr. Di Napoli.

10 THE COURT: So you stood two or three minutes
11 facing the wall and facing Di Napoli?

12 THE WITNESS: Securing the cuffs, yes, sir.

13 THE COURT: And everything that was going on
14 with the vehicle and the suitcase was going on behind you,
15 is that right?

16 THE WITNESS: Yes, sir. My back was to the vehicle.

17 THE COURT: All right.

18 Go ahead, Mr. Lopez.

19 Q All right.

20 That's what I am trying to get at.

21 When you were putting the cuffs on Joseph
22 Di Napoli you knew nothing about the contents of the suit-
23 case at that time or the valise?

24 A No, sir, I don't think so.

25 Q You learned about it a little while later, is

mp:mg 11

Reed-cross

1
2 that correct?

3 A I heard money mentioned, yes, sir.

4 Q Well, did you see the valise at all?

5 A I don't remember. I think I saw the valise. I
6 saw the large suitcase, yes, sir.

7 Q Now, when you were putting the cuffs on Di Napoli,
8 at that time, you have just told us you didn't know the
9 contents of the valise, isn't that correct?

10 A I believe that is correct.

11 Q What were you arresting Di Napoli for at that
12 specific moment, if you know?

13 A I was instructed to handcuff Mr. Di Napoli.

14 Q That's all, is that correct?

15 A Yes, sir. He had already been arrested.

16 Q Right.

17 Had Di Napoli at that time committed any crime
18 in your presence-- at that moment?

19 A No.
20
21
22
23
24
25

Tk6pm

1/11

Tram.

Q How about Papa? Had Papa committed any crime in your presence at that time?

A No.

MR. LOPEZ: I have no further questions.

REDIRECT EXAMINATION

BY MR. FORTUIN:

Q Focusing your attention on the vehicle that you followed for a while while you were on surveillance that evening --

A YES, sir.

Q -- when you received the radio call which initiated that surveillance do you remember who was on the radio?

A No, sir, I don't remember.

Q When the men eventually left 1908 Bronxdale carrying the suitcase were you able to see them leaving?

A No, sir.

Q So you have no personal knowledge based on your observations who was carrying the suitcase?

A No, sir.

MR. FORTUIN: We have no further questions.

THE COURT: Mr. Lopez?

MR. LOPEZ: No further questions, your Honor.

THE COURT: Step down.

1
2 THE WITNESS: Thank you.

3 (Witness excused.)

4 THE COURT: Any more witnesses?

5 MR. PHILLIPS: That is the government's rebuttal
6 case, your Honor.

7 THE COURT: Mr. Lopez, do you have any further
8 witnesses?

9 MR. LOPEZ: No further witnesses, your Honor.
10 That's our case.

11 THE COURT: All right. How long is it going to
12 take you to get me a memorandum in connection with this
13 case?

14 MR. LOPEZ: Monday morning at 9:00 o'clock.

15 Here is what I have to go through, Judge. Out
16 of courtesy to other attorneys who have been calling me up--
17 mine is a limited office, your Honor -- I have to consult
18 with them, tell them the facts, argue with them, tell them
19 that they are wrong.

20 THE COURT: You have until Monday morning at
21 9:00 o'clock.

22 MR. LOPEZ: All right.

23 THE COURT: Look, on Monday morning at 10:00
24 o'clock -- I want to make it absolutely certain so everybody
25 knows -- we are going to be in Courtroom 110. All attorneys

1 in the case are to be present and all of their clients are
2 to be present. 10:00 o'clock, courtroom 110.

3 Now, we arranged to have it on the first floor,
4 so that we have done away with the excuse I have heard so
5 much in this courthouse, "Judge, you don't know what the
6 elevators are like." That is an excuse that is not going
7 to be accepted.

8 Do you have another problem?

9 MR. PHILLIPS: Your Honor, will we be picking
10 a jury at that time?

11 THE COURT: I don't know. I will be very
12 honest. The jury will not be there until after I render a
13 decision on this. Maybe there will be. I don't know.

14 WE have a number of other motions outstanding.
15 I would like to be in position to dispose of them.

16 MR. PHILLIPS: Your Honor, with respect to this
17 motion that your Honor just heard, or this hearing, at this
18 point the government would like at some time to be heard
19 with respect to oral argument on the matter after we have
20 received Mr. Lopez' memorandum, perhaps at the close of one
21 of the days' sessions toward the end of next week.

22 THE COURT: I don't think it's going to take me
23 that long.

24 MR. PHILLIPS: To decide the motion?

1
2 THE COURT: That's right.

3 MR. PHILLIPS: Then earlier.

4 THE COURT: Yes, you will be given a chance
5 after you read Mr. Lopez' papers, and Mr. Lopez will also
6 be given a chance after he has had an opportunity to read
7 your papers. But I don't think it's going to take me that
8 long.

9 MR. ELLIS: Your Honor, my associate,
10 Mrs. Everitt, spent the better part of this week listening
11 to tapes that Mr. Phillips kindly made available.

12 At this point we have found just about no
13 mention of Mamone. I understand that he may be mentioned
14 on a Barnaba debriefing tape. I don't know that. Just by
15 process of elimination we are coming to that conclusion.

16 However, the print, the copy of the tape that
17 we have been given, is inaudible. I am in the process of
18 making arrangements to take that tape, that copy, to a sound
19 studio to see if I can get a sound engineer to amplify it,
20 so that perhaps we can determine what is on the tape. Your
21 Honor, that necessarily will have to be done over the week-
22 end.

23 I cite this as further reason why we won't be
24 ready to try this case on Monday and respectfully ask for
25 a continuance.

jhd

MR. PHILLIPS: May I just state for the record
I have said this before -- that the material that Mr. Ellis
is making reference to is 3500 material. Under the law he
is not entitled to it until the conclusion of the witness
direct examination.

Your Honor has directed the government to turn
over the material the night before the witness testifies.
He has received this material before even the trial starts
let alone the night before the witness testifies.

MR. ELLIS: Your Honor, Mr. Phillips --

THE COURT: I am well aware of it. Your motion
for a continuance is denied. Be in court at 10:00 o'clock
on Monday morning.

(Adjourned to 10:00 a.m., January 14, 1974.)

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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
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6	337	
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